



UNIVERSITY OF  
BIRMINGHAM

**THE INSTITUTIONALISATION OF REGIONAL  
INTEGRATION IN NORTH AMERICA**

by

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# ABSTRACT

Current studies of regional integration in North America claim that this process is limited to the entering of intergovernmental agreements that aim to expand and enhance cross-border flows of goods and capitals between Mexico, Canada and the US. Such studies claim that the political effects of the process on nation-states are limited and constrained by the decisions of the national governments.

In contrast, this thesis argues that the actions of transnational actors have increased the policy interdependence between the three countries in the arenas of environmental protection, labour cooperation and protection of foreign direct investment. Transnational actors have used, applied and interpreted the rules originally created by the intergovernmental agreements –NAFTA, NAAEC, BECA and NAALC– and have subsequently demanded additional and improved rules. Regional institutions have in turn responded to these demands by supplying new and improved regional rules. In doing so, transnational actors and regional institutions have furthered the policy interdependence between the three countries.

This phenomenon, known in other contexts as institutionalisation, demonstrates that the process of regional integration in North America is more substantial than previous studies claim. In addition, it illustrates the relevance of the theories of Liberal Intergovernmentalism and Supranational Governance to the analysis of the emergence and development of the North American integration process.

For my parents,

Refugio Pelcastre Cortés y Heriberto Farías Pérez

For my grandparents,

Cándida Cortés Cruz, Lorenzo Pelcastre Vargas, Paula

Pérez Ramos y Heriberto Farías Aguilar

For Kansas

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# ACRONYMS AND ABBREVIATIONS

The following acronyms and abbreviations are commonly used throughout the thesis.

AFL-CIO	American Federation of Labor and Congress of Industrial Organization
Auto Pact	Canada – United States Automotive Products Agreement
BEC	Binational Executive Committee
BECA	Border Environment Cooperation Agreement
BECC	Border Environment Cooperation Commission
BEIF	Border Environment Infrastructure Fund
CEC	Commission for Environmental Cooperation
CLC	Commission for Labor Cooperation
CUSFTA	Canada-United States Free Trade Agreement
EC/EU	European Community/European Union
ECE	Evaluation Committee of Experts
EPA	United States Environmental Protection Agency
FAT	Frente Auténtico del Trabajo
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTC	Free Trade Commission
GATT	General Agreement on Tariffs and Trade
GLWQA	Great Lakes Water Quality Agreement
IBC	(US-Canada and US-Mexico) International Boundary Commission
IBWC	(US-Mexico) International Boundary and Water Commission
IJC	(US-Canada) International Joint Commission
ILO	International Labour Organization
LI	Liberal Intergovernmentalism
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NADBank	North American Development Bank
NAFTA	North American Free Trade Agreement
NAO	National Administrative Offices
OECD	Organisation for Economic Co-operation and Development
PRI	Party of the Institutional Revolution (Partido de la Revolución Institucional)

SG	Supranational Governance
SMA	Mexican Secretariat of the Environment (Secretaría del Medio Ambiente)
WTO	World Trade Organization
DFATD or DFAIT	Canadian Department of Foreign Affairs, Trade and Development (formerly Department of Foreign Affairs and International Trade)

# DEFINITIONS

**Policy Interdependence:** The costs and benefits that the implementation of a domestic policy, in the pursuit of the national interests of a state, imposes upon or produces for other states, independent of the transaction costs related to the pursuit of such interests.

**Regional Integration:** A process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence through their participation in intergovernmental agreements, the establishment of regional institutions and the setting of transnational rules, in order to enhance cross-border exchanges or address policy externalities.

**Institutionalisation:** The degree of policy interdependence between nation-states in a given common policy arena.

**Common Policy Arena:** An institutional framework for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues.

**Transnational Activity:** The use, application and interpretation of regional rules by transnational actors.

**Transnational Actors:** Actors that engage in exchanges across national borders.

# CHAPTER 1:

## INTRODUCTION

# 1. INTRODUCTION

## 1.1. OVERVIEW

This thesis aims to contribute to the advancement of the field of North American Studies through the reappraisal of the process of integration between Canada, Mexico and the United States.

In this thesis, I first show how current studies of regional integration in North America assume that the process is limited to the entering of intergovernmental agreements intended to expand and enhance cross-border flows of goods and capitals between Mexico, Canada and the United States (US). According to these studies, the North American integration process is governed and managed by the national governments through the entering and implementation of agreements for the promotion of trade and investment and circumscribed side agreements on the protection of the environment and labour. Such studies assume that the political effects of the process are thus limited and constrained by the decisions of the North American national governments.

I argue that, in the twenty years of operation of these agreements, there have been significant political developments in North America that most scholars have not yet acknowledged. The most important of these is the increase in policy interdependence between the US, Canada and Mexico in the arenas of environmental protection, labour cooperation and protection of foreign direct investment. In this thesis, policy interdependence is understood as the costs and benefits that the pursuit of the national interests of a state imposes upon or produces for other states, independent of the transaction costs related to the pursuit of such interests. I further argue that this increase in policy interdependence has resulted from the actions of transnational actors and regional institutions regarding the cross-border rules set in the North American Free Trade Agreement (NAFTA), the North American Agreement on Environmental Cooperation (NAAEC) and its spin-off the Border Environment Cooperation Agreement (BECA), and the North American Agreement on Labor Cooperation (NAALC).<sup>1</sup> I argue that transnational actors

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<sup>1</sup> Original spelling retained for US organisations, and North American treaties and institutions.



have used, applied and interpreted the rules created by the national governments, reached the limits of such rules and eventually demanded more and improved rules. Meanwhile, regional institutions have responded to these demands by supplying new and improved cross-border rules in an effort to expand their own powers and responsibilities. The actions and decisions of these actors have thus furthered the policy interdependence between the three countries in ways that go beyond those that the national governments had originally foreseen.

In this thesis, I thus reassess the research question(s), concepts, theories and variables currently used to analyse the occurrence and development of regional integration in North America. I argue that such reassessment will show that the process is more substantial than it is claimed in the existing literature. In the following pages, I briefly introduce and discuss these theoretical tools before developing them at length in the body of this thesis.

#### 1.1.1. AIMS OF THIS THESIS

This thesis aims to contribute to the further development of the literature focused on the study of the phenomenon of regional integration between Canada, Mexico and the United States. I do this in the following way.

First, my thesis questions the focus of current analyses of North American integration in and their assumptions about the nature and development of the process. I argue that current analyses assume that the process is limited to the implementation and maintenance of intergovernmental agreements for the promotion of trade and foreign direct investment in Canada, Mexico and the US, through the reduction and elimination of tariffs and barriers to these exchanges. In response to these studies, I argue that current interactions between governmental actors, regional institutions and transnational actors in North America indicate the creation, development and consolidation of ‘common policy arenas’, which current studies have overlooked. I define common policy arenas as institutional frameworks for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues. The creation of such arenas resulted from the implementation of NAFTA and its side agreements.

Yet, its development and consolidation resulted from the participation of transnational actors in the use, application, interpretation, modification and eventual demand of new or improved transnational rules between the US, Canada and Mexico. These arenas favour the interaction between national governments, regional institutions and transnational actors, thus influencing and shifting the nature and development of the integration process. The creation of these arenas is the start of the process, while their development and consolidation increases the policy interdependence among countries.

Second, my thesis argues that North American integration has been under-theorised. I argue that current analyses have made little or inadequate use of theories of regional integration to analyse this process, opting instead for the use of theories of international trade, international negotiation and International Political Economy. Furthermore, even in the few cases that regional integration theories have been used to analyse the occurrence and development of the process in North America, their concepts, frameworks and arguments have been applied selectively and limitedly, thus obscuring rather than enlightening its dynamics.

In response to this limited use, my thesis proposes to use the concepts and frameworks of theories of regional integration to explain and analyse the corresponding phenomenon in North America. It proposes to use two of the most recent and widely debated theoretical approaches that have sought to explain the occurrence and development of regional integration in Europe. These are Liberal Intergovernmentalism and Supranational Governance (see Aspinwall, 1995; Wincott, 1995; Risse-Kappen, 1996; Caporaso, 1998; Branch and Øhrgaard, 1999; Puchala, 1999; Eilstrup-Sangiovanni, 2006; Schimmelfennig and Rittberger, 2006; Wiener and Diez, 2009; Pollack, 2010; Malamud, 2005, 2011; Mattli and Stone Sweet, 2012). The decision to focus on these two theories is based on their characteristics as the most refined and debated approaches in recent years on regional integration.<sup>2</sup> I argue that these theories provide a solid foundation for this thesis inasmuch as both are focused on studying and explaining the rationale

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<sup>2</sup> Authors such as Cram (1996) and Malamud (2011) argue that these approaches are the most refined versions of intergovernmentalism and neofunctionalism, which are two contending theories of regional integration. While this view of the theories fails to capture the full progression of the debate, I agree with Aspinwall that it allows scholars to focus on the chief features of the most recent paradigms (1995, p. 478).

and means of joint policy-making among countries taking part in an integration process. My thesis constitutes the first attempt to apply the conceptual and theoretical frameworks of these approaches to North American integration, as no other author has yet endeavoured to theorise comprehensively the occurrence and development of the process.

Third, using the conceptual and theoretical frameworks of the LI and SG approaches, my thesis discusses the emergence, development and institutional structure of three policy arenas: environmental protection, labour cooperation and protection of foreign direct investment. In doing so, I first examine the current state of the concerned arena and describe the relations among the relevant actors participating in it. I then assess whether such arena has witnessed the use and advancement of rules, procedures and practices established at the regional level –at all times keeping in mind that these were originally implemented by national governments.<sup>3</sup> I also analyse, discuss and attempt to explain whether such arenas have developed and how and to what extent have regional or transnational actors contributed to their development (or in some cases, lack thereof). Finally, I determine whether these actions have had any effect on or shifted the behaviour of governmental actors.

Finally, my thesis attempts to determine which of the abovementioned theories provides a more comprehensive explanation for the development (or advancement) of the North American integration process.

#### 1.1.2. RESEARCH QUESTION

Most of the current research on North American integration is policy-oriented. In the works that examine and discuss regional integration in North America with the aim of theorising it, most authors still conceive the process as being mainly concerned with the merging of the economies of the three neighbouring countries. Further, these authors build their works on the assumption that the process is fundamentally of an economic and intergovernmental nature. Finally, among those few authors that have attempted to use regional integration theories in their analyses of

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<sup>3</sup> In this thesis, by ‘advancement’ or ‘improvement’ of cross-border rules, I refer to the creation or modification of rules that increase the ability of transnational actors to engage in cross-border exchanges (or make them more efficient) or that allow them to address the externalities of such exchanges in an easier or more effective manner.

North American integration, most of them have done so with normative aims. As a result, most research questions leading current research on this issue are either policy-oriented, normative or aimed at contributing to the fields of international trade, international negotiation or International Political Economy theories.<sup>4</sup>

I argue that most authors base their works and, consequently, frame their research questions on the assumption that the process of regional integration in North America is of an intergovernmental nature. Therefore, I argue that very few authors have raised questions that encourage a more comprehensive analysis of the process. Instead, most studies discard the possibility that integration is occurring in this region beyond the integration of markets and chains of production of these countries. Some studies even dismiss the value of regional integration theories for examining the North American experience. In this thesis, I thus propose to reappraise the process of regional integration in North America and reassess its study. To do this, I lay out the core research questions of this thesis: is regional integration occurring in North America? If so, why, how, and to what extent is it occurring?

Here, by regional integration, I refer to the process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence by entering into intergovernmental agreements, establishing regional institutions and setting cross-border rules, in order to enhance cross-border exchanges or address policy externalities. In asking these questions, I problematise the concept of regional integration as well as the ways and means in which it has been assessed and measured in the current literature. I argue that these two questions shift the focus away from the policy-oriented or normative preoccupations that prevail in most of the current literature and encourage a more extensive exploration of the pace, direction, and most importantly, the nature of the process.

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<sup>4</sup> Examples of policy-oriented and empirical research questions present in the current literature include that of Andreas (2003), who examines the ways in which North American integration been affected by the primacy of national security (p. 2). Meanwhile, Genna and Mayer-Foulkes (2013) provide an example of a normative question when they enquire whether and “why is there a need for the three countries to cooperate” (p. 3). Finally, some other research questions combine these broad categories. For instance, Clarkson (2008) explores the question of whether North America “exist[s] in any similar way to the EU” (p. 15).

I argue that this shift in the conception and understanding of the process will reveal significant developments in the institutional structure that have been overlooked in the current literature. I argue that the US, Canada and Mexico have progressively moved from creating and implementing domestic policies to respond to cross-border challenges and externalities, to implementing bilateral mechanisms and eventually, entering into agreements to create cross-border rules and regional institutions, in order to address these issues. I emphasise that these rules and institutions did not exist before the entering into force of NAFTA and its side agreements. Furthermore, transnational actors (in conjunction with regional institutions) have pushed these cross-border rules beyond the original NAFTA bargain. Yet, most current studies have overlooked this change and therefore I propose to examine regional integration in North America using a conceptual and theoretical framework grounded in (European) integration theories.

I argue that a handful of authors have called for the creation of such a framework. So far, O'Brien (1995), Sands (2002), Della Sala (2008), Warleigh-Lack (2008) and Aspinwall (2009) have called for:

- Using regional integration theories to analyse, evaluate and explain the economic and institutional developments occurring in North America;
- Shifting the understanding of regional integration in North America (and elsewhere) from a condition to a process;
- Developing a conceptual and theoretical framework that can be applied to the already large amount of empirical research focused on North America.
- Using (European) regional integration theories, namely intergovernmentalism and neofunctionalism to analyse the North American process; and,
- Focusing on the analysis of policy developments at the regional level –rather than mostly examining economic issues (as current studies do).

I argue that their works contributed to reveal the gap in the current literature created by the lack of a conceptual and theoretical framework to analyse North American integration. On this basis, as well as proposing a shift in the main research questions constituting the field of North American studies, I also propose to introduce three concepts for use in the analysis of this process: common policy arenas, transnational activity and institutionalisation. These concepts will be part of the theoretical framework I propose and use in this thesis. In this regard, it is worth mentioning that instead of elaborating a set of basic, a priori definitions, I have derived them from current regional integration theories, in order to later use and (re-)incorporate them in existing theories.

### 1.1.3. CONCEPTS

#### COMMON POLICY ARENAS

Most scholars of North American integration tend to analyse the interrelation or the effects of the creation and development of policies on one policy field, or ‘policy arena’, with the creation and development of policies in another arena. For instance, they might address the question of whether the creation or improvement of policies aimed at promoting trade and investment flows affect the enforcement or improvement of environmental and labour protection laws. While such studies have made important contributions, their focus has hindered the analysis of institutional developments that occur within the same policy arena. In other words, few scholars ask how interactions between national governments, regional institutions, and subnational actors in a given policy arena contribute to advance (or weaken) the rules and institutional framework of such specific arena. The result is that most accounts tend to generalise their findings or conclusions about one arena to the process as a whole, assuming that progress (or weakening) of common rules in a given arena automatically results in advancement (or digression) of the rules and institutional structure of the process of regional integration as a whole.

In this thesis, in contrast, I propose to disaggregate the study of regional integration into the analysis of separate ‘common policy arenas’. A common policy arena (or arena, for short) is

understood as an institutional framework for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues. For example, in North America, I examine the arenas of environmental protection, labour cooperation and protection of foreign direct investment. I propose to use this concept as a basis for the description and examination of policy developments in the region. This concept should thus allow for a better understanding of changes in the institutional structure of a given arena, without entangling its creation or development with that of other arenas. I argue that the analysis of how these arenas are individually created and how they subsequently develop will shed light on the role and importance of different actors at different stages of the process.

#### TRANSNATIONAL ACTIVITY

In this thesis, I argue that national governments create common policy arenas by entering into intergovernmental agreements, which in turn derive from deliberate decisions to link their domestic policies on a given set of policy matters. I further argue that although national governments create them, these arenas expand and consolidate as a result of the actions and decisions of transnational actors (i.e. transnational activity) and regional institutions (i.e. regional policy-making), sometimes at the expense of the power of governments and their control over the process.

I contend that this outcome is the result of deliberate and purposive actions of transnational and regional actors who are pursuing their corresponding interests. While the former are interested in enhancing cross-border exchanges or addressing policy externalities, the latter are interested in increasing their powers vis-à-vis national governments. In the pursuit of their own interests, transnational actors and regional institutions expand and consolidate the cross-border rules in ways that go beyond those that national governments had originally agreed. However, I argue that such proactive transnational activity and innovative policy-making has been uneven across the abovementioned arenas. In some arenas, transnational actors have used, applied and interpreted the cross-border rules in an intensive and frequent manner, while regional

institutions have promptly responded to this demand delivering new or improved cross-border rules. However, this has not been the case in other arenas.

Nonetheless, as important as the actions of both transnational actors and regional institutions are, only the latter have been effectively incorporated into current theories of regional integration. Despite its importance, transnational activity has not received sufficient attention in the scholarship. Therefore, in order to explain the occurrence, expansion and consolidation of common policy arenas, I propose to introduce the concept of ‘transnational activity’ alongside those of intergovernmental bargaining and regional policy-making. In this thesis, I define transnational activity as the use, application and interpretation of regional rules by the actors that conduct exchanges across national borders (i.e. transnational actors). I maintain that once they encounter the limits of such rules, these actors demand the clarification, arbitration or modification of such rules (and possibly the creation of new ones).

In contrast with current scholarship, I argue that transnational exchanges are not limited to economic transactions (i.e. trade, investment, production and distribution) but also include communications on the policy externalities that result from engaging in such transactions (e.g. impact of differing technical standards or diverging health and environmental regulations, use of diverse national currencies, etc.). I claim that these communications on policy externalities are as important as economic transactions given that they generate action towards the clarification, arbitration or modification of cross-border rules. I argue that the result of these actions might be the emergence of more and better rules, the strengthening of regional institutions and an intense interaction between transnational and regional actors, which often prompts changes in the behaviour of governments that had not otherwise occurred. However, as argued above, in other arenas, transnational actors may have used and applied the cross-border rules limitedly, and consequently may demand few changes to such rules. What is more, even when transnational actors have demanded changes to the rules, regional institutions may be reluctant or unable to deliver such changes. As a result, few or no new rules emerge and there may be little to no effect of cross-border rules upon the actions and decisions of national governments.



## INSTITUTIONALISATION

The third concept I propose in this thesis is institutionalisation. I argue that most studies make inadequate use of the concept of regional integration. In past and current literature, a common assertion is that there is ‘less’ or ‘more’ integration in a given policy arena. This assertion makes it difficult to understand what is (and what is not) integration. To address this problem, it is thus necessary to clarify the meaning of this concept. Following the definition I proposed above, one can easily determine whether there is (or not) integration. If two or more-nation states in the same region have developed and furthered their policy interdependence through the entering of intergovernmental agreements, the establishment of regional institutions and the setting of transnational rules, it can be claimed that there is integration. The answer to the question of whether there is integration or not is thus simplified to ‘yes or no’.

However, the level of policy interdependence between them can still vary from one arena to another. In this case, the possible answers to the question of how much interdependence there is are thus simplified to ‘a lot’, ‘very little’ and degrees between these poles. I even contend that, in extreme cases, there might be no interdependence at all.<sup>5</sup> It is here that I introduce the concept of institutionalisation as a term distinct from integration. As argued above, the latter concept refers to the overall process whereby sovereign nation-states develop and further their policy interdependence. Meanwhile, the former concept aims at determining how much interdependence there is. In this thesis, I thus define institutionalisation as the degree of policy interdependence in a given arena.

In other words, while the use of the concept of integration brings up the question of whether nation-states are furthering the policy interdependence between them, institutionalisation asks how much interdependence they are developing. This question thus enables researchers to argue that there is high policy interdependence in one common policy arena, while there is little or no policy interdependence in another. I argue that this varying degree of interdependence in

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<sup>5</sup> The complete lack of policy interdependence in a common policy arena would entail that there has been a digression in such arena to the point that the cross-border rules have almost become meaningless. Most likely, this would be the result of an active undermining of the rules by transnational actors, regional institutions, national governments or combinations of them all.

different arenas is determined by the number of cross-border rules that constitute the arena as well as the intensity in the use of those rules. Therefore, the concept of institutionalisation brings insights into whether and with what intensity the rules set in place are being used. The more rules there are and the more they are being used, the more institutionalisation there is.

#### 1.1.4. MEASUREMENT

Following from the previous concept, I argue that the number and use of cross-border rules are measures of how institutionalised is a given common policy arena. In brief, the former is determined by the number of individual provisions in an intergovernmental agreement (i.e. the number of articles in a given treaty). Due to their formal nature, cross-border rules can only be created by national governments and, under certain circumstances, regional institutions. Therefore, their number does not significantly vary across time.

However, cross-border rules can be used multiple times by transnational actors (e.g. individuals, firms, non-governmental organisations and trade unions). These actors use cross-border rules when they invoke a specific provision of an agreement before the national governments or regional institutions. Because in most arenas, there is a formal mechanism to invoke these rules, one can determine with precision how many times a specific rule has been invoked. In the common policy arenas examined in this thesis (environment, labour and protection of foreign direct investment), these mechanisms are known, respectively, as Citizen Submissions, Public Communications, and Notices of Arbitration. I collectively refer to these mechanisms as ‘citizen inputs’.

The number of rules and the number of times such rules are used are thus quantifiable variables. I propose to use these variables as measures of the creation, expansion and consolidation of common policy arenas: number of intergovernmental agreements for the creation stage, the number of citizen inputs for the expansion stage and the number of successful citizen inputs, for the consolidation stage. Using these measurements, I aim to demonstrate that some common policy arenas in the North American integration process are more (or less) institutionalised than currently argued.

### 1.1.5. THEORETICAL APPROACHES AND FRAMEWORK

In this thesis, I aim to demonstrate the relevance of the theories of Liberal Intergovernmentalism and Supranational Governance to the analysis of the emergence and progression of North American integration.

As noted, most scholars focused on the analysis of this process provide only policy-oriented empirical analyses. Most authors do not consider it substantial enough to require the use of theories –or at least not those that have been used in other contexts (e.g. Europe) to explain the occurrence of regional integration. For this reason, despite the wide range of research on North American Politics, very few scholars have aimed to use (European) regional integration theories to explain the political developments between the US, Canada and Mexico. Some of the reasons that these authors have provided for the lack or limited use of these theories are the lack of ‘strong’ regional institutions; the lack of intergovernmental agreements subsequent to NAFTA; the ‘little’ engagement of transnational actors with the rules of NAFTA; or the firm stance of the national governments towards the maintenance of their political sovereignty. Yet, I argue that none of these assumed characteristics of the integration process impedes the use and application of regional integration theories to the North American case. On the contrary, I consider that the use of these theories will demonstrate that some of the dynamics that are present in the European processes of integration are also present in the North American case, namely the positive relation between transnational activity and regional policy-making.

In this thesis, I thus draw on the theories of Liberal Intergovernmentalism (LI) and Supranational Governance (SG), which provide different accounts of the occurrence and development of regional integration process. The former highlights the interests of nation-states in the pooling of sovereignty to secure certain policy outcomes, mainly of an economic nature. The latter emphasises the actions of supranational (or regional) institutions and their interests in expanding their own powers and jurisdiction as factors accounting for the occurrence and development of integration. As commonly viewed, these theoretical approaches are opposing and mutually exclusive accounts of the phenomenon of regional integration. Yet, I argue that

although they might be regarded as opposing, they are not mutually exclusive. Instead, they simply explain different stages of the process and therefore emphasise different aspects of it as the main factor accounting for integration.

I argue that while LI emphasises the ‘grand bargains’ among national governments that create policy arenas and start the process of regional integration, SG emphasises the moments between those bargains as the key stage that accounts for the development of the process. In brief, LI focuses on the ‘grand’ moments of regional integration (i.e. the entering of intergovernmental agreements) while SG focuses on the day-to-day developments (i.e. interactions between transnational actors and supranational institutions) that often push regional beyond what was intended in the grand bargains.

I argue that this (mis)understanding of Liberal Intergovernmentalism and Supranational Governance has resulted from the occurrence of a dependent variable problem. Despite the perception that they are competing theories explaining the same phenomenon, i.e. integration, I argue that they are actually explaining different stages of the process. LI is interested in the analysis of the occurrence of integration. Therefore, it centres on the role, interests and actions of national governments in the ‘grand bargains’ and conceives intergovernmental treaties as the cause of integration. Meanwhile, SG is interested in the development of the process. Therefore, it focuses on the role, interests and everyday interactions between transnational, supranational and (to a lesser degree) governmental actors and conceives treaties as the result of integration. Hence, I claim that LI and SG do not compete to explain the integration process as a whole, but only different stages of it. Therefore, I claim that both theories can be used to explain different stages of the process. On this basis, I apply both to the North American case in order to shed light on the policy (consequently, also political) developments that have still gotten unnoticed and determine which explains *more and better* the overall occurrence and development of the process.

Yet, I also aim to contribute to this theoretical debate. I argue that Liberal Intergovernmentalism and Supranational Governance have overlooked the importance of the actions of transnational

actors in the development of regional integration. While LI dismisses the importance of transnational actors vis-à-vis national governments and limits their role in the process to their participation in domestic politics, SG regards them as mere demanders of regional policy-making. However, I argue that transnational actors and their actions –i.e. transnational activity– are key to the development and consolidation of regional integration processes. They not only fuel the process when they demand more and better cross-border rules, but they also provide information and ideas on how to improve existing and deliver more cross-border rules, and thus increase and improve their cross-border exchanges. Therefore, when transnational actors use rules, common policy arenas tend to expand. When they do not, arenas do not expand (and may even contract). For this reason, I argue that the analysis of their actions is crucial to the overall understanding of the process.

## 1.2. STRUCTURE OF THE THESIS

To advance these arguments, I have structured this thesis as follows.

Chapter 2 analyses the current literature on North American integration and aims to demonstrate that, although there is a significant number of studies of integration in the region and they span various fields, they fall short of providing a comprehensive theorisation of the process. I argue that most of those studies that have theorised the process have assumed or built on the assumption that the regional integration process is dominated by the national governments. I review the negative effects that this assumption has had upon the study of North American integration. Afterwards, I introduce the works of the scholars who have contributed to the development of a conceptual and theoretical framework for the analysis of North American integration, discuss their relevance to this thesis and the ways in which I build upon their ideas and arguments. Finally, I present the contributions of this thesis to the literature.

Chapter 3 presents the theoretical approaches used in this thesis. It first outlines the origins of the field of Regional Integration Theory and the emergence of the debate between neofunctionalism and intergovernmentalism. It then explains the relevance of this debate to the field and its transformation into the debate between Supranational Governance and Liberal

Intergovernmentalism. It moves on to presenting SG and LI, their main claims and assumptions and then tries to determine their core mechanisms. It concludes with the discussion of some considerations regarding the use of these theories.

Chapter 4 presents the thesis' full theoretical framework. Following the analysis above, I assert that there exists a dependent variable problem in the formulation of LI and SG and, as a result, some scholars perceive these theories as opposing. Instead, I claim that the theories explain two different aspects of the integration process. LI focuses on explaining the cause of integration, while SG focuses on explaining the result of integration. I thus conclude that these theories are not opposing but, instead, merely analyse different stages of the process. Therefore, instead of lumping together both theories, I propose to evaluate which one offers a better explanation of the process as a whole.

Further, I introduce and elaborate on the terms used in the thesis, including common policy arenas, transnational activity, cross-border rules and institutionalisation. I then present the three main arguments of this thesis, which are:

- 1) Regional integration occurs through the creation, expansion and consolidation of common policy arenas.
- 2) Each of these stages results, correspondingly, from intergovernmental bargaining, transnational activity and regional policy-making.
- 3) The creation, expansion and consolidation of common policy arenas are all occurrences of regional integration. Nonetheless, the degree of policy interdependence in such arenas can vary, depending on the number of rules and the intensity of their use. Thus, there are varying degrees of institutionalisation across policy arenas.

This chapter concludes with the presentation of the methods used to select the case studies analysed in the thesis.

Chapter 5 constitutes the start of my reappraisal of North American integration. It provides the historical context of the relations between Canada, Mexico and the US. It aims to demonstrate

that there was very limited policy interdependence and regional integration between the North American countries before the entering of NAFTA and its side agreements in 1994. It reviews the lack of economic or political relations at the trilateral level as well as the somewhat limited bilateral diplomatic and economic relations before the 1990s and determines that such relations were not as strong as often claimed in the wider literature. Finally, it also demonstrates that all the agreements entered between the North American countries, including NAFTA and its side agreements resulted from intergovernmental bargains. I conclude this analysis arguing that national governments were the main actors in the integration process.

Chapters 6 to 8 comprise the three empirical cases in which I apply the abovementioned theoretical framework. In these chapters, I analyse the common policy arenas on environmental protection, labour protection and protection of foreign direct investment in order to determine whether and to what extent they have consolidated, expanded and institutionalised.<sup>6</sup>

In all of these chapters, I follow the same structure. First, I present a background to the case in which I describe and discuss relevant agreements or institutions in place before the entering and implementation of NAFTA or its side agreements. I explain that despite the existence of such mechanisms, none of them created a common policy arena on either of these issues, nor did they significantly further the policy interdependence between these countries on these issues. I argue that these mechanisms were either non-existent, contingent or never used and thus had little or no impact on the making of the corresponding domestic policies of the North American states.

Subsequently, I explain the reasons for which the North American national governments decided to enter the NAFTA and its side agreements. I work to show that in all cases, the entering of these agreements responded to the perceived national interests of Mexico, Canada and the United States –understood as the expressed policy preferences of their presiding governments– even if in some cases, they partly addressed the demands of transnational actors in the three countries. I also describe in detail the cross-border rules and institutions that have been established in each common policy arena.

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<sup>6</sup> As I further explain later in the thesis, these common policy arenas were created through the entering and implementation of their corresponding agreements, i.e. NAAEC, NAALC, and NAFTA's Chapter 11.

Finally, in each chapter I analyse three instances that contributed to or hindered the expansion and consolidation of the common policy arenas under analysis. The cases illustrate the ways in which transnational actors used and applied the cross-border rules set in place by the national governments through NAAEC, NAALC and NAFTA's Chapter 11, and whether and the extent to which, if at all, these actors demanded new or better rules when they reached the limits of the existing ones. I analyse and explain whether and why (or why not) regional institutions responded to such demands, and most importantly, whether their actions had any effect on governmental actors. To conclude, I evaluate and determine whether the policy arena under analysis has been institutionalised or not. Following the arguments I presented in chapter 4, I conclude that the common policy arena on environmental protection has expanded and consolidated, and the degree of policy interdependence is high. Therefore, this arena is highly institutionalised. Meanwhile, the common policy arena on labour protection has expanded but not consolidated and the degree of policy interdependence in it is low. Therefore, this arena is partly institutionalised. Finally, the common policy arena on the protection of foreign direct investment has neither expanded nor consolidated and there is no significant policy interdependence in it. I thus claim that it is not institutionalised.

In the conclusion, I summarise and reiterate the findings of the thesis.



CHAPTER 2:

THE STUDY AND

THEORISATION OF REGIONAL

INTEGRATION IN NORTH

AMERICA

## 2. THE STUDY AND THEORISATION OF REGIONAL INTEGRATION IN NORTH AMERICA

### 2.1. REVIEW OF CURRENT LITERATURE

In this chapter, I briefly review how scholars have studied and theorised North American integration. From a review of the current literature, it is possible to acknowledge that the study of North American integration is informed by various and different perspectives within those disciplines which look at different aspects of the process. Some scholars are interested in the economic and financial impact of regional integration upon the nation-states taking part in the process (Primo Braga, et al., 1994; OECD, 1998; Hinojosa Ojeda, et al., 1995; Whalley, 1998; Chase, 2003; Easterly, et al., 2003). Other scholars are interested in the analysis of the economic and political relations that regional integration creates between the countries involved (O'Brien, 1995; McKeen-Edwards, et al., 2004; Clarkson, 2008; Ayres and MacDonald, 2012; Capling and Nossal, 2009). Finally, other scholars analyse the social (Poitras and Robinson, 1994; Gilbert, 2007) or legal (Abbott and Snidal, 2000) implications of the occurrence of regional integration in North America for governmental and non-governmental actors alike. Further, these studies analyse different moments of the process. Some are centred on the analysis of the emergence and implementation of NAFTA and its side agreements, others analyse its development to date, while others are interested in assessing its potential development.

Despite this range of focuses and standpoints, it is possible to find two commonalities in the current literature on North American integration. First, most analyses of the process are conducted on an almost entirely policy-oriented empirical basis. To date, most studies are not aimed at theorising, or contributing to the theorisation of, North American integration. Instead, most studies analyse and discuss the occurrence of North American integration in order to provide policy recommendations regarding actual or potential common issues facing the three countries (see Harris, 2000; Pastor, 2005, 2011; Peschard-Sverdrup, 2007; Genna and Mayer-Foulkes, 2013). Although these studies constitute the bulk of the scholarship on North America,

due to their policy-oriented empirical focus, they are not discussed more extensively in this thesis. Instead, I focus on those works which do aim to directly theorise the process of regional integration in North America, through the use of regional integration theories.

Second, among those studies that have theorised, or contributed to the theorisation of, the process, I argue that most have assumed or built on the assumption that North American integration is of an intergovernmental nature. In other words, rather than analysing whether the process is of an intergovernmental, supranational or other nature (e.g. a combination of both), most of these studies assume the dominance of national governments over the process.<sup>7</sup> As a result, this second group of studies has reinforced the assumption of an intergovernmental bias in the process. These authors play down or dismiss the need to use theories of regional integration to examine the nature, pace and direction of the process in North America. For these authors, the intergovernmental nature of North American integration is so evident that there is no need to conduct an analysis to determine whether this is indeed the case.

### 2.1.1. THE ASSUMPTION THAT NORTH AMERICAN INTEGRATION IS AN INTERGOVERNMENTAL PROCESS

It is important to understand the nature and consequences of this assumption in order to understand the contribution of this thesis. For most scholars interested in the study of regional integration in North America, the foundations of the process lie in the intergovernmental agreements that the United States, Canada and Mexico have entered into in the last fifty years. The rationale for reaching these agreements lies in the economic gains associated with increasing cross-border trade and investment exchange between them. I concur with this claim. Yet, most scholars assume that because the foundations of regional integration in North America lie in intergovernmental bargains, the subsequent development of the process is still of an intergovernmental nature. This understanding has thus led to the assumption that the current

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<sup>7</sup> In addition to the traditional categories of intergovernmental and supranational, other authors have claimed that processes of regional integration might have intergovernmental and supranational features at the same time (Warleigh-Lack, 2009, p. 44) or that they can be at the same time “less than supranational [and] more than intergovernmental” (Øhrgaard, 1997; Branch and Øhrgaard, 1999).

direction, pace and extent of the process is still best explained through accounts and analyses of the decisions, actions and interests of the national governments over the proposal, negotiation and implementation of such agreements. It is from this assumption that most studies begin. I disagree with this claim.

A review of the current literature reveals the prevalence of this assumption among scholars. For instance, Mattli and Stone Sweet claim that North America is “a regional integration scheme whose central mode of governance is intergovernmental [and whose] aim is limited to establishing a free trade area” (2012, p. 8). To these authors, the integration process is limited to the entering into force of NAFTA, a free trade agreement, which was negotiated and implemented between the national governments of Canada, Mexico and the US to accomplish their individual objectives and interests. According to Tarr (2007) and Bélanger (2010) the national governments carefully negotiated and crafted the agreement to ensure that they would always be in control of the process.

Although almost every scholar acknowledges that NAFTA and its side agreements created institutions whose responsibilities go beyond the management and promotion of free trade and foreign direct investment, most of these scholars also dismiss any role for such institutions in furthering the process. For instance, Wise argues that the negotiation and entering into force of NAFTA gave proof of the possibilities of trilateral cooperation amid the pursuit of individual national interests (2009). However, she claims that the unwillingness of the national governments to create strong “supranational institutions [stunted] its evolution into a more compelling regional project” (pp. 142-143). Following this line of thought, Clarkson et al. argue that these institutions have proven inconsequential, and that the intergovernmental state-of-affairs is thus unlikely to change (2005, p. 177). Similarly, Courchene claims that the fact “that NAFTA lacks [any] institutional infrastructure or institutional depth is fully recognised” in the literature (2003, p. 274). In this common understanding, the national governments established institutions to manage the agreement, but they also constrained the rule-making capacities of these institutions to ensure that they would not interfere with their sovereignty, actions and

power. For example, Hufbauer and Wong claimed that the North American governments deliberately undermined the regional institutions they created by allocating them with minimal financial and human resources, so they would not gain salience in policy-making (2003, p. 67).

In sum, in the view of these authors, North American integration is best explained through the analysis of the actions of governments. Therefore, the widespread view –or assumption– among these scholars is that national governments dominate the process (Warleigh-Lack, 2010, p. 51). I argue that, because of this assumption, the specific area of regional integration theory within the emerging field of North American Politics has not developed effectively. While there are a number of gaps and issues in the current literature, I argue that the most evident are related to or result from the assumption that the process is fundamentally and ultimately led by the national governments of the US, Canada and Mexico. This assumption has engendered the following issues and gaps.

#### THE LIMITED USE OF THEORETICAL APPROACHES TO EXAMINE AND EXPLAIN THE RELATIONS BETWEEN THE NORTH AMERICAN COUNTRIES

It is most extensively acknowledged that regional integration theories help researchers to understand, examine and explain the multiple and complex phenomena occurring among nation-states interacting in and within a defined region (see Caporaso, 1998; Van Appeldorn, Overbeek, and Ryner, 2003; Diez and Wiener, 2009; De Lombaerde, 2011). Yet, for various reasons, regional integration in North America is still under-theorised.

First, a few authors assert that the process does not need to be theorised. For instance, Haynal asserts that in order to gain a better understanding of the relations between the North American countries, “it might be useful to think independently of the grand debate” between theories of regional integration (2004, p. 4). He argues that the features of the most important regional agreement, i.e. NAFTA, mean that theories of regional integration have little relevance to the analysis of the North American case. Similarly, Park and Ruiz Estrada argue that integration in North America is limited to the implementation of NAFTA, a purely economic agreement that

was established with the sole purposes and the “common desire” to make the North American markets more efficient and increase economic exchanges between these countries (2010, p. 10).

North American integration is thus commonly seen as limited to the implementation of a free trade agreement and the establishment of a handful of regional institutions with very limited responsibilities and constrained capacities (Baldwin, 1994; see also Moss, 1994; Jong Choi and Caporaso, 2002; Domínguez Rivera, 2007; Warleigh-Lack, 2009). According to these authors, these characteristics limit the potential for theories of regional integration to explain the dynamics between the North American countries, which are seen as only loosely integrated around the single issues of trade and investment. This understanding of the process has resulted in negative effects for the scholarship. For instance, Rosamond has gone so far as dismissing the comparative study of European and North American integration, claiming that “we should not expect the likes of NAFTA [...] to come to resemble the EU and thus [to offer any] lessons to academic analysts” of the process (2005, pp. 463-464).

Warleigh-Lack (2006) takes a similar position. This author first acknowledges that some regional integration processes, including North America, may not be as dominated by national governments as it might seem at first (2006, p. 38). However, he then claims that in the comparative study of the EU, “regional integration projects such as NAFTA” were and cannot be compared with the European Community and European Union (EC/EU) (2006, p. 37) due to the lack of supranational institutions.<sup>8</sup> In this regard, it could be argued that the fact that a regional arrangement has no supranational institutions does not mean that it cannot generate pressure for further integration. Therefore, North American integration could provide insights into the occurrence and development of the general phenomenon of integration. Yet, in this specific work, Warleigh-Lack dismisses the value of (European) regional integration theory to the analysis of the process in North America, and vice versa.

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<sup>8</sup> I use the term EC/EU to refer to the polity originally established by the Treaty of Rome as European Economic Community (EEC), which through various political and economic agreements and developments, was later transformed into the European Community (EC), and more recently, the larger European Union (EU). Throughout this thesis, unless otherwise stated, I consider the EEC, EC, and EU as a single, continuously existing institution.

## THE EMPHASIS ON THE USE OF THEORIES OF INTERNATIONAL TRADE, INTERNATIONAL NEGOTIATION OR INTERNATIONAL POLITICAL ECONOMY IN STUDIES OF NORTH AMERICAN INTEGRATION

In cases where scholars have theorised the process, there has been a focus on the use of theories of international negotiation and international trade rather than regional integration theories.<sup>9</sup> In these cases, the argument begins with the claim that the social and political relations between the North American countries are much weaker than among countries in other regional integration processes, e.g. Europe, Asia and South America. In the view of these scholars (see Fink and Krapohl, 2010; Studer and Wise, 2007; Bergmann, 2011) the process does not require a theorisation distinct to those provided by international trade and international negotiation theories and, in fewer cases, theories of international political economy (see Breslin and Higgott, 2000).

For instance, Schott (2007) acknowledges that the occurrence of regional integration in North America predates the creation of CUSFTA and NAFTA. Therefore, in his view, the phenomenon of integration is not limited to the entering of free trade agreements. Mayer (1998) and Cameron and Tomlin (2000) also acknowledge that NAFTA significantly changed relations between the North American countries through the occurrence and effects of integration. Yet, just as with other scholars interested in analysing political and economic developments in North America (see Pomfret, 1997; Jönsson, 2002, in Simmons, Carlsnaes and Risse, 2002), their research is limited to the analysis of trade negotiations between the three countries or the analysis of the dynamics of international negotiations. In general, these authors focus on the analysis and discussion of the strategies of the national governments to advance their own (mostly economic) interests amid a process of regional integration (for instance, analysing the

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<sup>9</sup> International Trade Theory analyses the decisions, options and policies of nation-states regarding the exchange of goods and services across national borders. It focuses on the analysis of factors such as the absolute and comparative advantages of a country in its exchanges with other countries and the discussion of the impact of different policies on the global trading system (see Pomfret 1997, 2008). It is thus not greatly concerned with how these policies are created or whether they engender political interdependence between countries. Meanwhile, International Negotiation is a research sub-field of IR (largely influenced by economics) which is mainly concerned with the study of diplomacy and statecraft in the negotiation of international, regional or multilateral agreements.

advantages of promoting either regionalism or multilateralism). Therefore, even if their works provide an ample account of intergovernmental negotiations, their research and theoretical contributions are still limited to the sub-fields of international trade and international negotiation. I argue that this circumstance has resulted in a general lack of engagement of North America-focused scholars with regional integration theories.

Other scholars use and apply theories of International Political Economy (IPE) to analyse and explain the occurrence and development of North American integration. Scholars using IPE theories to analyse this process include Roessler (1993), Smith (1993; 2011), Wise (1998; 2007), Clement, et al. (2000), Breslin, et al. (2002), McDougall (2006), Hussain (2008), McBride (2009), and Santa-Cruz (2012). Most of these authors argue that the occurrence and progression of North American integration responds to the wider political and economic changes taking place at the global level –namely the phenomenon of globalisation. Therefore, they argue that the study of North American integration is best served by the use of theories of IPE that interconnect analyses of the political behaviour of states at a regional level with studies of economic trends at the global level. Their research is thus centred in the analysis of whether and how different domestic and international factors may determine the setting of foreign economic policies of nation-states and the creation of global economic institutions (Frieden and Martin, 2001, p. 2).

However, I claim that given that IPE theories focus on the analysis of economic trends, developments and outcomes at the international level, rather than policy (and hence political) developments at the regional level, their usefulness for analysing North American integration is limited. Authors using IPE theories are mostly concerned with the interrelation between regional integration and global (economic) trends and not the occurrence and development of the regional integration process *per se*. For this reason, the potential of IPE theories to analyse



and explain the occurrence, and more importantly, the development and expansion of regional integration processes is still limited.<sup>10</sup>

#### THE LIMITED ENGAGEMENT OF NORTH AMERICA-FOCUSED SCHOLARS WITH (EUROPEAN) THEORIES OF REGIONAL INTEGRATION BEYOND THEIR PARTIAL EMPIRICAL APPLICATION TO THE NORTH AMERICAN CASE

A small number of scholars (O'Brien, 1995; Chanona Burguete, 2003; Hussain, et al., 2008; Hussain, 2009; Genna, 2011; Macdonald, 2011) have applied theories of regional integration to their analyses of North America. In most cases, these are theories that were developed to explain European integration, which is widely seen as the pioneer and forerunner regarding efforts towards regional integration and its theorisation (see Hussain, 2001; Roy and Domínguez, 2005; Cameron, 2010). However, the fact that the predominant regional integration theories are seen as only deriving from the European experience has resulted in a limited engagement of North America-focused scholars with such theories. In most cases, scholars have inadequately applied these theories to the North American case, reducing their use to the evaluation of a few 'key' characteristics. On this basis, some of these scholars have outright dismissed the usefulness of these theories for the analysis of North American integration.

In this respect, De Lombaerde, et al. (2010a; 2010b) maintain that the theories that have emerged from the European experience on integration are indeed biased towards explaining the specific political and economic circumstances of the process in Europe, rather than explaining the phenomenon as a whole. However, they also argue that scholars interested in the analysis of North American integration can still make use of such theoretical approaches. Furthermore, Laursen (2010) argues that the application of European integration theories to the analysis of the

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<sup>10</sup> For instance, Hegemonic Stability Theory, a prominent IPE approach, has been used to analyse and explain the occurrence and progression of regional integration in North America (see Lee, 1999; Morales Moreno, 2008; Genna, 2011). For these scholars, the rationale for the process lies in the presence of a hegemonic state, i.e. the US, which is capable of and committed to sustaining free trade with subservient states in its region, i.e. Canada and Mexico, as a way of promoting economic liberalism at a global level (Genna, 2011, p. 145). While this theory might explain why economically powerful countries choose to commit to integration with other less economically powerful countries, it does not adequately explain why the latter readily engaged in this process. Moreover, it does not address whether a process of regional integration might develop and even expand, to the point of altering the (political) behaviour of all the sovereign states involved –even the most economically powerful ones. For this reason, I argue that Hegemonic Stability Theory inadequately explains the occurrence and development of regional integration in North America.

North American case might contribute to generalisations about the development of the general phenomenon.

On this basis, a handful of scholars have attempted to apply existing theoretical approaches to regional integration in Europe to their studies of North American integration, namely neofunctionalism and intergovernmentalism. However, I argue that the use of these theories has been limited and selective. For instance, Hussain et al. (2008) claim to use neofunctionalism to analyse the state of regional integration in North America after 9/11. Instead, these authors only provide a very short and broad evaluation of some ‘neofunctionalist attributes’ observed in the context of US-Mexico relations after 2001, and thus did not actually engage with neofunctionalism (p. 194). I contend that these scholars merely reduce the theory to a set of semi-measurable attributes, which are very briefly evaluated with little to no empirical support, and which were mostly aimed at determining the status of North American *regional security*, not regional integration. Therefore, the value of their work for the analysis of the North American integration process is very limited.

I consider that this practice of reducing the tenets of theories of (European) regional integration to a few measurable ‘attributes’ has had negative consequences for North America-focused scholarship. In some cases, it has resulted in the failure to translate empirical findings into the advancement of regional integration theories (see Genna, 2013). In others, it has discouraged the further use of (European) regional integration theories for the analysis of North American integration. For instance, Macdonald argues that the use of neofunctionalist and intergovernmentalist theories is “increasingly irrelevant” for the analysis of North American integration (2011, p. 125). Similarly, Hussain claims that these approaches are “increasingly unsuitable” to the analysis of the North American case (2001, p. 30). These authors argue that neofunctionalism relies too heavily on the creation and functioning of supranational institutions to be of any relevance to the North American context, where the national governments rejected the creation of supranational institutions that managed and promoted integration. However, they also dismiss the usefulness of intergovernmentalism for the analysis of North American

integration, claiming that this theory has paid insufficient attention to the role of non-state actors in the promotion of “a regional project” (Macdonald, 2011, p. 118). On this basis, Macdonald and other authors reject both theories and opt instead for the use of the ‘new regionalism framework’ in their analyses.

I thus argue that the limited and unsystematic engagement of North America-focused scholars with European integration theories has resulted in the dismissal of the analytical value and explanatory power of these approaches to understand the North American process. I further argue that these studies have hindered rather than fostered the development of the area of regional integration theory within the field of North American Politics.

#### THE USE OF ‘NEW REGIONALISM’ FOR THE STUDY OF REGIONAL INTEGRATION VIS-À-VIS ‘OLD REGIONALISM’

Another theoretical approach to the analysis and discussion of the phenomenon of regional integration is New Regionalism (see Breslin and Higgott, 2000; Breslin, Hughes, Phillips, and Rosamond, 2002; Shaw, Grant and Cornelissen, 2011). Although very few works use this framework for the analysis of North American integration, I also discuss it here as it constitutes a competing approach to the more established theories of regional integration, such as intergovernmentalism and neofunctionalism. According to scholars who subscribe to this approach, so-called “‘old regionalism’ simply focused on state actors. [In contrast, New Regionalism studies] interactions with interstate and global institutions and incorporates the role of non-state actors (especially multinational corporations, emerging civil society organisations and other non-governmental organisations)” into its analyses and account on the occurrence of regional integration (Breslin and Higgott, 2000, p. 347).<sup>11</sup>

In principle, this shift in the focus of studies of regional integration might enhance our understanding of these processes. However, the use of New Regionalism might lead scholars to

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<sup>11</sup> New Regionalism scholars use the term ‘old regionalism’ to refer to the more established, EC/EU-centred theories of regional integration such as Liberal Intergovernmentalism and Supranational Governance, even if such characterisation is controversial and questionable at best.

problematic research issues. According to Hettne, the New Regionalism (NR) approach presents researchers with ontological and epistemological problems created by the little or lack of agreement on the phenomenon being studied and the way in which it should be studied (2005, p. 543). Given that NR scholars favour breadth over parsimony, to date there is no consensus on what ‘regionalism’ is and how it differs or resembles regional integration. Due to the indeterminate nature of this concept, NR scholars have thus failed to agree how one should approach its study.

Moreover, New Regionalism’s theoretical framework obscures more than it enlightens our understanding of the causes of the phenomenon of regional integration. First, New Regionalism generally ties the occurrence and development of regional integration to the effect of loosely defined “forces of globalisation” (Poguntke, 2010, in Warleigh-Lack, Robinson and Rosamond, 2011, p. 22). In most cases, regionalism is regarded as a consequence of changes in the ‘international economic order’, rather than an outcome of regional dynamics, without acknowledging, explaining or elaborating upon the difference in outcomes –i.e. limited intergovernmental agreements in one region, wide-ranging supranational arrangements in other region, and no agreements or arrangements of any kind in yet other regions. At times, NR scholars even assert that further regional integration “both results from and further drives globalisation” (Breslin and Higgott, 2000, p. 345), thus making it difficult to differentiate between dependent and independent variables. New Regionalism often leaves these questions unanswered.

Second, contrary to the claims of its proponents (see Breslin and Higgott, 2000, p. 335), given NR’s focus on the analysis, comparison and reflection on trends specific to certain regional contexts, the theoretical claims made and empirical findings are not generalisable. Given that studies using New Regionalism have focused on constructing a range of models, structures and processes for each individual case study, comparison between them is difficult and generalisation (almost) impossible. In other words, while ‘old regionalism’ favours parsimony and coherence over detail, New Regionalism favours breadth over comparability.

Finally, most studies using New Regionalism aim to derive normative claims from their analysis, thus burdening researchers with additional concerns that might be unrelated to the explanation of why and how regional integration occurs and develops. For these reasons, as well as for those presented in previous pages, in this thesis I opted to use, apply and contribute to the development of the so-called ‘old regionalism’ approaches, rather than those of New Regionalism.

#### THE USE OF THEORIES OF REGIONAL INTEGRATION FOR CRITICAL AND NORMATIVE PURPOSES RATHER THAN EXPLANATORY OR ANALYTICAL ONES

Among the scholars who have engaged with regional integration theories, a number of them have done so in a normative rather than an analytical manner, i.e. discussing which kind of policies, deriving from theories of (European) regional integration, *should* be pursued in North America. For these scholars, the use of regional integration theories is thus not aimed at analysing and explaining the occurrence and development of regional integration, but determining and stating the direction in which such processes should go. I argue that in most cases, this normative focus has resulted in an unsystematic and selective use of, and engagement with, the concepts and arguments of these theories. In their own words, these scholars have “paid more attention to [assessing] similarities and differences” between the tenets of different theories, in order to determine which is ‘more relevant’ or ‘more favourable’ to North America, rather than using their full theoretical framework in their analysis of integration in the region (Hussain, et al., 2008, p. 227).

For example, Inglehart, Nevitte, and Basaf (1996), Chanona Burguete (2003) and Genna (2011) have all discussed whether and how North American integration can progress from an intergovernmental to a more ‘institutionalised’ –i.e. sovereignty-pooling and social-centric process. While these authors contribute to the devising of policy arenas which might (and in their view, should) be influenced and involved in the regional integration process, their studies do not contribute to understanding or explaining the changes that have already occurred or are

occurring in such policy arenas. Some scholars have marginally departed from this normative approach. For instance, Clarkson has argued that studies should not focus on the question of whether North America should advance along the lines of the more “institutionally mature region, [the EC/EU, but instead] assess whether North America under NAFTA ‘exists’ in any way similar to the EU” (2008, p. 15). However, Clarkson still regards Europe as a political, social and economic model to follow. Therefore, his main research question is still normative (i.e. should North America follow the European integration process?) and it differs from those posed in this thesis (i.e. is a process of regional integration occurring in North America and, if so, why?). In sum, only a handful of scholars studying North American integration have comprehensively used regional integration theories (as contradictory as this might sound) to explain and analyse the phenomenon.

#### 2.1.2. STRENGTHS IN THE CURRENT LITERATURE ON REGIONAL INTEGRATION IN NORTH AMERICA

Notwithstanding these issues, I argue that some scholars have effectively contributed to the theorisation of the process of North American integration and furthered its study. They have done so in the following ways.

First, to analyse the occurrence and development of the phenomenon in North America, scholars have proposed a shift from the use of theories of international trade, international negotiation and International Political Economy, to regional integration theories. Second, they have contributed to a shift in the understanding of integration, from a condition to a process, and in doing so, shifted the main research question from ‘is North America *integrated*?’ to ‘is North America *integrating*?’ I argue that this change in the main research question contributed to an expansion of the field of North American Politics. It also contributed to the establishment of a number of subsequent research questions, such as the ones that underpin this thesis. Third, they have contributed to the development of a theoretical framework, even if in a very limited way, to analysing the occurrence and development of North American integration. Finally, they have

contributed to the identification of changes in the ways and means through which policies are created and modified in Canada, Mexico and the United States as a result of the occurrence and development of integration between these countries. In the following pages, I summarise and discuss these works and their relevance to the field, including this thesis.

#### FROM INTERNATIONAL TRADE, INTERNATIONAL NEGOTIATION AND IPE THEORIES TO REGIONAL INTEGRATION THEORIES

O'Brien (1995) was one of the first scholars to propose the use of regional integration theories to analyse and explain the political institutional developments occurring in North America during the 1990s. He contributed to a broadening of the debate on North American integration by proposing a shift in the focus of current analyses from economic to institutional and political developments. He also proposed a change in the choice of theoretical approaches used to analyse and explain regional integration in North American, which was then dominated by international trade, international negotiation and IPE theories.

O'Brien suggests that the use of intergovernmentalism and neofunctionalism can contribute to the scholarly analysis of integration in North America –even if, according to him, they offer an ‘incomplete’ view of the process (1995, p. 695). In his view, both theories fail to grasp the actual source of integration. On the one hand, neofunctionalism portrays regional integration as an unquestioned and self-sustained process –a view that is often contradicted by actual political developments. On the other hand, intergovernmentalism fails to ponder the long-term effects of current decisions. However, rather than dismissing these theories, the author suggests a revision and amendment of them in light of the North American experience (p. 694). For instance, he stresses the importance of ideas and (technical) knowledge as sources of regional integration in North America and argues that these should be included as factors accounting for the occurrence and development of the process (p. 702) –even if he did not specify whether and how those ideas are transformed or incorporated into common policies. He also claims that further integration in the region will not be determined by intergovernmental bargains, but by the

interests of different groups of transnational actors (mainly between business and social-oriented actors) (p. 721).

Likewise, Della Sala (2008) also argues that the approaches and models drawn from the European experience on integration “might provide us with useful ways in which to understand [...] integration in North America” (p. 127). Although his main interest lies in ‘mapping’ the theorisation of regional integration in Europe, Della Sala argues that the models used to explain the occurrence of such a process can be used to analyse the occurrence, development and governance structure of North America. In this respect, he argued that the theories of neofunctionalism and intergovernmentalism, which he sees as constituting the ‘classic debate’ in the literature on European integration, might shed some light on how and why the process has come about, who are the most important actors in the process, and how the process has evolved. He further argues that these two approaches provide a good basis to analyse and explain North American integration.

Neither O’Brien nor Della Sala made further use of these theories or undertook their proposed revisions and changes. Yet, I maintain that their arguments on the usefulness of regional integration theories for the analysis of North America contributed to the development of the field, inasmuch as they identified or acknowledged the relevance of European integration theories to the case.<sup>12</sup>

#### REGIONAL INTEGRATION: FROM A CONDITION TO A PROCESS

Sands (2002) also raises questions about the assumed nature of regional integration in North America. He argues that so far there has been no clear definition of the concept of integration and that this shortcoming creates significant problems for the study of the phenomenon. According to this author, the current definition, first, relies too heavily on the measurement of trade and investment flows. He argues that most scholars and commentators of integration in

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<sup>12</sup> O’Brien opted to return to the use of theories of International Political Economy in his analysis and eventually concluded that it was an external systemic force –i.e. globalisation– rather than an internal dynamic, what was driving the regional integration processes in Europe and North America. However, as I have mentioned above, the aim of IPE theories is to analyse and explain economic outcomes at the international level. Therefore, I argue that their usefulness in explaining political changes at the regional level is limited.



North America see the phenomenon as consisting only in the merging of the markets of Canada, Mexico and the US. In his own words, “when most commentators talk about increasing integration [...] in North America, they are basing their judgment on trade flows alone” (2002, p. 1). Second, he argues that the current definition assumes that integration is a *condition*. In his view, most scholars see integration as a condition to be attained and, therefore, their choice of theories to analyse the phenomenon has been guided by their answer to the question of whether North America is integrated (or not). In exchange, Sands suggests that we evaluate regional integration as a *process*, thus shifting the question from ‘has integration been attained’ to ‘is integration occurring?’ (2002, p. 1).

To answer these questions, Sands proposes to expand analyses of North American integration beyond trade and investment and onto other policy arenas, such as environmental protection, regional security and collaboration in research-and-development. In doing so, he also raises the question of what can be deemed integration in these arenas (see Sands, 2005). To determine what integration is, he proposes to shift from the analysis of material factors, such as trade and investment flows, onto non-material factors such as shared practices and common understandings created by transactional interactions (see Sands, 2006). This proposal is of special relevance to this thesis, as it suggests the need for scholars to analyse other factors beyond economic indicators in order to develop or re-examine current concepts and theoretical frameworks aimed at explaining integration.

I argue that, along with his proposal to shift the understanding of regional integration (from a condition to a process), Sands’ proposal to analyse non-material factors significantly contributed to the study of North American integration. Although the author did not attempt to incorporate these arguments into existing theories of regional integration, I build on his view of integration as a process to develop this thesis’ theoretical framework and I follow his recommendation to look at other arenas beyond trade.

Warleigh-Lack (2008) was one of the first scholars to undertake the task of developing a conceptual and “pre-theoretical” framework for the analysis of North American integration (p. 2).<sup>13</sup> He argues that concepts and explanations of regional integration in Europe can and should be applied to analyses and assessments of the North American process. According to him, theories used in the analysis of European integration, such as intergovernmentalism and ‘supranationalism’ (i.e. neofunctionalism), can be used in the North American case to determine the nature of the process and the factors accounting for its occurrence. For instance, although the current integration process in North America is seen as an intergovernmental one, Warleigh-Lack argues that the nature of the process could actually be both intergovernmental and supranational, given that initial intergovernmental decisions can lead to ‘supranational’ consequences and that the nature of policy-making can differ across policy arenas (2008, p. 3).

Warleigh-Lack further argues that although some scholars remain sceptical about the existence of an integration process in North America, some others have noted its impact on states and their societies. He claims that some governmental actors “have actively sought to deepen NAFTA’s institutionalisation and scope” (2010, p. 51). Although he does not clarify the meaning of the concept of institutionalisation, he suggests that this is an “ideational aspect that can, to some extent, be traced empirically, even if it is hard to quantify” (2010, p. 51). He also comments that related research developed by Aspinwall (2009) indicates that the three countries have been developing significant policy ‘interlinkage’, “perhaps providing the roots of a transnational policy community” (Warleigh-Lack, 2010, p. 51).

Despite the importance of his contributions, Warleigh-Lack did not further develop his pre-theoretical framework; nor did he apply it to empirical work in order to test it. Yet, I claim that he contributed to an advance in the field by identifying the need to develop a conceptual and theoretical framework to analysing the regional integration process in North America.

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<sup>13</sup> He argues that such framework is ‘pre-theoretical’ inasmuch it only aims at developing “a conceptual framework that is robust enough to be applied to original empirical work”, but that such work would be only conducted in a subsequent stage of his research (2010, p. 44).

Moreover, as with O'Brien and Della Sala, Warleigh-Lack argued that the theories of European regional integration provide a solid basis to build such a framework thus strengthening this thesis' choice of theoretical approaches.

#### IDENTIFYING CHANGES IN POLICY-MAKING IN NORTH AMERICA

Aspinwall (2009) concurs with Warleigh-Lack that North America is undergoing a process of political change that has not been fully acknowledged in the literature. He claims that, notwithstanding the intergovernmental nature of NAFTA and its side agreements, the three countries have experienced the occurrence of a process called 'NAFTAization'. In this process, an initial intergovernmental bargain prompts on-going political adjustment at the domestic level. Such adjustment results in a progressive political (i.e. policy) convergence among states and sub-state actors in the region, even if these changes and convergence in policies were not required by the initial agreement or foreseen by the member states.<sup>14</sup> This process occurs because of the action of regional institutions and results in changes and innovations in the domestic institutional and legal frameworks of the states involved; leading towards emerging 'regional' policies. According to Aspinwall, this process is more visible in Mexico, where the institutional and legal frameworks structuring and regulating various policy areas are weaker.

I claim that there is a significant difference between the concepts of integration and NAFTAization. I argue that bringing national policies closer together (i.e. policy convergence or NAFTAization) is a different effect to making a country's national policies resemble more those of its neighbours (policy harmonisation). What is more, either of these two effects might take place in a country without any corresponding change taking place in the domestic policies of its neighbours. Meanwhile, creating regional rules requires the explicit expression of willingness on the part of incumbent national governments, to establish rules that will apply to all of them. Therefore, while the two former effects simply 'align' the separate domestic

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<sup>14</sup> Such changes may include the creation of new domestic institutions; the implementation of new standards or norms beyond those specifically implemented in the original NAFTA text; the creation of new forms of cross-border interaction between public officials; and the emergence of pressures to strengthen the regional institutions and common policies (Aspinwall, 2009, p. 2).

policies of different nation-states, the later effect *links* their domestic policies. This entails that NAFTAization is not regional integration, but simply an effect related to the occurrence and development of the latter. Therefore, even if Aspinwall's work contributes to an advance in the argument that regional integration in North America has had political effects on the nation-states, he does not examine the phenomenon of regional integration *per se*, but only its effects on nation-states. Notwithstanding this remark, I argue that Aspinwall contributes to a furthering of the study of North American integration, by identifying these changes in the policy-making practices of Canada, Mexico and the United States. His work reveals the emergence of 'regional' policies and thus advances the claim that the process is more complex than generally acknowledged.

I argue that the work of Aspinwall, along with those of O'Brien, Della Sala, Sands and Warleigh-Lack, has contributed to furthering research into North American regional integration, and the study of its nature, occurrence and development. I build on theirs scholars' arguments and their conceptual and pre-theoretical frameworks, to develop those of this thesis and thus to contribute to an advance in current research on North American integration. In the following section, I describe how I attempt to do this.

## 2.2. CONTRIBUTIONS OF THIS THESIS TO THE LITERATURE ON NORTH AMERICAN INTEGRATION

First, I contribute to the theorisation of North American integration. In this respect, I consider that despite its significance and its impact on the relations between Canada, Mexico and the US, this process has not been yet effectively examined with the conceptual and theoretical instruments that were specifically developed for analysing, discussing and explaining regional integration. While a significant number of scholars have discussed and analysed North American integration from various disciplines and standpoints, none of them has yet attempted to use *comprehensively* theories of (European) regional integration to analyse the process. In the following chapters, I review and apply these theories to the North American case.

Second, I intend to contribute to the further advancement of the subfield of Regional Integration Theory by introducing, clarifying and increasing the coherence of three core concepts present and used in the theories of Liberal Intergovernmentalism and Supranational Governance. These are *common policy arenas*, *transnational activity* and *institutionalisation*. My thesis aims to contribute to the appraisal and further enhancement of the analytical capacities of these concepts within the frameworks of LI and SG. In doing so, my thesis also intends to determine which of these theories provides a better framework to incorporate and operationalise these revised concepts in order to enhance the overall explanation of regional integration.

Third, I contribute to the further advancement of the theories of Liberal Intergovernmentalism and Supranational Governance, and especially the latter, through the assessment of the role of transnational actors in the development of regional integration.<sup>15</sup> Currently, the role of these actors has been disregarded or overlooked due to these theories' corresponding focus on the actions of national governments and supranational and/or regional institutions. Hence, my thesis attempts to elucidate the relevance of transnational actors and their actions for the development of common policy arenas –thus influencing the behaviour of national governments and the capacity of supranational/regional institutions.

Finally, I intend to determine whether the theories of Liberal Intergovernmentalism and Supranational Governance, which were developed to assess and explain the regional integration process in Europe, can be used and applied in other contexts. In doing so, my thesis contributes to challenge the presumed problem  $n=1$  present in the current theorisation and analysis of regional integration (see Caporaso, Marks, Moravcsik, and Pollack, 1997; Jachtenfuchs, 2001; Warleigh-Lack and Rosamond, 2010).<sup>16</sup> The  $n=1$  problem is the assumed methodological and (meta-)theoretical problem posed by the existence of one sole case in the study of regional integration, that is the European Community/European Union (EC/EU). To those scholars who maintain that such problem exists, the EC/EU is a unique or at least substantially different

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<sup>15</sup> This being an analytical and explanatory research, I refer to *the role* of transnational actors in the *development* of regional integration, rather than their *importance* in the *advancement* of such processes –a wording which would suggest a prescriptive or normative approach to these issues.

<sup>16</sup>

process, which has resulted in the creation of a new form of polity, unseen anywhere else in the world. The characteristics of the EC/EU (e.g. the pooling and ceding of sovereignty of states and the economic and social convergence of its populations) make it a unique case, thus making comparison and generalisation of its conceptual and theoretical framework extremely difficult (Malamud, 2011, p. 240; 2013, p. 390).<sup>17</sup> In this thesis, I challenge this assumed limited capacity of Europe-centred theories to analyse and explain non-European integration processes. In the following chapter, I make use and build on some of these theories to assess, analyse and discuss the North American experience. In doing so, my thesis takes on the proposal of Warleigh-Lack and Rosamond, who encouraged scholars “to develop general testable propositions that could be applied to all cases of regional integration”, including the North American one (2010, p. 1005).

### 2.3. CONCLUSION

In this chapter I have aimed to demonstrate that although the emerging field of North American Studies spans a number of disciplines and is informed by various and different perspectives within them, one can find two commonalities in the literature. First, most of the studies in the field are developed on a purely empirical basis –i.e. not aimed at theorising or contributing to the theorisation of the regional integration process. Second, among those studies that aim at theorising the process, most of them assume or are built on the assumption that the direction, pace and nature of the process are still determined by the actions and decisions of the national governments.

This latter assumption is of utmost concern as it has created important gaps in the field. First, it has discouraged the use of regional integration theories to analyse the North American case. Second, it has discouraged the use of theories distinct to those of international trade,

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<sup>17</sup> Whether there is small or large number of cases (N) of regional integration is a contentious issue that I do not address in this thesis. According to the Regional Integration Knowledge System (RIKS) there are up to 61 cases of regional *arrangements*. Whether some or all these constitute cases of regional integration depends on the type of variables used by the researcher. It is however, worth mentioning that RIKS counts towards this figure regional arrangements that I do not consider instances of regional integration, (e.g. agreements involving subnational authorities, arrangements that are no longer active and/or that have been superseded by larger ones) (see RIKS, 2012).

international negotiation and international political economy, despite their limitations for the analysis of and the explanation for the occurrence and development of the regional integration process. Third, it has resulted in a limited engagement with intergovernmentalism and ‘supranational’ approaches, beyond their partial application to the North American case. Fourth, on those very few occasions in which scholars have indeed used theories of regional integration, it has been for critical and normative purposes rather than analytical and explanatory ones. Fifth, it has resulted in the adoption of other theoretical frameworks, namely New Regionalism, at the expense of the approaches of ‘Old Regionalism’. I claim that all these gaps and issues have thus resulted in few scholarly works actually using theories of regional integration theory. This thesis thus constitutes an attempt to address these issues and provide a revised and more comprehensive account of North American integration.

# CHAPTER 3:

## THEORETICAL APPROACHES



### 3. THEORETICAL APPROACHES

In this chapter, I introduce the theoretical approaches that I will use in this thesis. I first briefly discuss how the phenomenon of (European) regional integration has been studied and how the field of Regional Integration Theory emerged. I then describe the emergence of the debate between neofunctionalists and intergovernmentalists. I argue that the theoretical approaches that were the subject of this debate differed significantly from previous approaches inasmuch they mainly focused on explaining the occurrence and development of the process, and not its potential for maintaining peace in Europe. I argue that the critiques and revision of these approaches resulted in the emergence of Liberal Intergovernmentalism (LI) and Supranational Governance (SG). I argue that the debate between these two theories has been key to the further development of the field.

In order to understand the debate between LI and SG, I present the main claims of both approaches, the position of governmental, regional and transnational actors within them and identify their core mechanism, that is, the main factor accounting for the occurrence and development of integration. I conclude this chapter by making some considerations about the use of Liberal Intergovernmentalism and Supranational Governance as the theoretical basis of this thesis.

#### 3.1. THE STUDY OF REGIONAL INTEGRATION

The emergence of regional integration as a differentiated academic field occurred around the 1950s and 1960s, when the political and economic developments taking place in Europe suggested that a new kind of polity was emerging on the continent, and that it was shifting political authority away from sovereign nation-states and on to regional institutions. During these early decades, however, most research on regional integration focused heavily on its potential for maintaining peace in Europe rather than on the analysis of the tasks, transactions and practices involved in the process. For instance, according to Deutsch, the concept of (regional) integration entailed the attainment of peace among nation-states and

their populations. Meanwhile, Haas (1961) argued that integration was not an end-state but the process of attaining such a state. Despite this disagreement, Deutsch, Haas and other scholars agreed that research on regional integration was aimed at analysing the collective progression of nation-states, especially European, towards such end-state, which they referred to as “political community” (Haas, 1961, p. 366). During these decades scholars continued to emphasise the potential of regional integration as a means for maintaining peace among the European nation-states.

Gradually the field began to move away from this normative and utilitarian understanding and towards the analysis of the occurrence and development of the process. Scholars began to generate theories about the factors engendering the process, the behaviour and role of the actors taking part in it (including their interests, incentives and interactions) and the structures and patterns that the integration process created over time. The field witnessed the rise of federalism and functionalism. Yet, as a result of events occurring in the European Economic Community (EEC), both theories came under question and some scholars suggested that it was necessary to re-examine them (see Haas, 1970; Lindberg and Scheingold, 1970; Schmitter, 1970; Puchala, 1972).

During the 1970s, the field witnessed a significant refinement of the theoretical approaches to integration, their aims, as well as those of the field in general. Schmitter (1970), Puchala (1972) and Haas (1976) proposed new ways to understand, explain and analyse the occurrence and development of the process. Further, Lindberg (1971), Puchala (1972) and Haas (1976) called for research on regional integration to focus only on the theorisation of the current state of the process, rather than on its structural outcomes. Haas emphasised the need to analyse the present status of integration, rather than its future or desired direction, due to the difficulties inherent to conceptualising change and institutional outcomes along alternate dimensions (1976, p. 175). The decline of functionalism (although not federalism) gave rise to the emergence of the debate

between its revisionists, the neofunctionalists, and its contenders, the intergovernmentalists.<sup>18</sup> This shift in the focus of analysis was important to the field, as it prompted scholars to address the most fundamental questions about the process of integration, namely what it is, what forces are driving it and whether it strengthens or reduces the political autonomy of nation-states. Throughout this decade and onwards, neofunctionalist and intergovernmentalist scholars engaged in an extended debate on the causes and effects of regional integration –which mainly concerned the process experienced in Europe as a result of the creation of supranational institutions and the expansion of their policy competences.

### 3.2. THE BEGINNING OF THE DEBATE: NEOFUNCTIONALISM AND INTERGOVERNMENTALISM

#### 3.2.1. NEOFUNCTIONALISM

Neofunctionalism revised and furthered the concepts and arguments of functionalism, a theory that argued that in a context of economic integration between countries the linking of functionally related activities eventually results in political integration.<sup>19</sup> According to functionalists, to address a policy issue, a common institution with authority for setting joint policies would often require setting or adjusting policies in another policy arena. This process, which results in the constant linking of functionally related activities, sustains and reinforces itself, thus leading to increasing integration between countries. Functionalists claim that this process takes place even among nation-states with competing interests.

Neofunctionalism retains the basic tenets of functionalism. It regards integration as a process concerned with the resolution of specific and highly technical problems that result from the interaction between highly industrial, pluralistic nation-states (Caporaso and Keeler, 1993; Huelshoff, 1994). It claims that in a context of high economic interdependence, the occurrence

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<sup>18</sup> For a more detailed account of this debate and the historical development of the field in general see Diez and Wiener, 2009, p. 6-11.

<sup>19</sup> By functionally related, functionalists referred to policy issues which overlapped different policy arenas (Mitrany, 1965, p. 135). For instance, the establishment of a common market is functionally related to the setting of common trading standards. Similarly, the freedom of movement of labour is functionally related to the recognition and exercise of the right to work.

of these problems prevent sovereign nation-states from fully benefiting from cross-border trade and investment between them. To address these problems, which are transnational and recurring in nature, nation-states need to pool some of their decision-making prerogatives and policy-making capacities into supranational organisations charged with managing the set of policies in question.<sup>20</sup> Nonetheless, as argued above, the solution to these problems often requires further integration of functionally related tasks or policy domains (e.g., the promotion and protection for foreign direct investment might require the implementation of cross-border laws for the protection of intellectual property). This situation leads to pressures to incorporate related policy arenas into the decision- and policy-making powers of supranational institutions, with the unintended and unforeseen consequence for national governments of promoting further integration in new policy arenas (Pollack, 2010, p. 18). To neofunctionalists, this effect, known as ‘spill-over’, is the driving force of integration (Niemman and Schmitter, 2009, p. 49).

Most neofunctionalist theorists argue that the linking of functionally related tasks is likely to be automatic (Haas and Schmitter, 1964, p. 717; Schmitter, 2005, p. 257).<sup>21</sup> That is, the actors participating in regional integration processes make political decisions by ‘indirection’. The process thus ‘automatically’ develops as result of rational decisions of national governments, ‘social actors’ and regional institutions.<sup>22</sup> While governments rationally pursue their own national interests, social actors and interest groups pursue their collective interests, which are commonly related to the maintenance and enhancement of their own economic well-being (Rosamond, 2005, p. 244). To reconcile these diverging interests, supranational actors functionally link different policy issues, therefore gaining increased decision- and policy-making power as a result of rational decision and actions by both governmental and social

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<sup>20</sup> Schmitter claims that despite the supposed self-interested, rational pursuance of national interests, governmental actors “are likely to miscalculate not only their capability to satisfy initial mutually agreed-upon goals, but also the impact of these efforts upon other, less consensual goals” (2005, p. 259). This entails that nation-states may put themselves in a position in which they are pressed to cede or pool more sovereign powers than they originally expected.

<sup>21</sup> Neofunctionalism has been revised in several occasions, thus constantly moving further away from the claims proposed by its original authors. Here, I have attempted to summarise the claims of the various neofunctionalist theorists although I acknowledge that there are some differences between older and more recent versions of neofunctionalism.

<sup>22</sup> ‘Social actors’ is one of the ways in which Haas, Schmitter and other neofunctionalist scholars refer to what I call transnational actors (i.e. organised business groups, cross-border labour unions, etc.)

actors. This prominent position in the integration process increases the influence of supranational actors, making them the most important of all actors.

### 3.2.2. INTERGOVERNMENTALISM

Intergovernmentalism contests some of the central claims of neofunctionalism. As its name suggests, it considers integration to result from the rational decisions by nation-states, which opt to enter into agreements and establish institutional arrangements to improve their position in the international system. For intergovernmentalists, the establishment of such arrangements is conducted through negotiation, collaboration and, if needed, circumscribed delegation of responsibilities and limited, conditional, dependent, and reversible transfer of authority to intergovernmental institutions (Hoffman, 1966, p. 909). The aim of these cooperative arrangements is to allow nation-states to increase their control over domestic policy outcomes through the reduction of the effects of international policy externalities and to prevent other nation-states from reversing its policy commitments (Cooper, 1986, cited in Moravcsik, 1993, p. 485-486).

Intergovernmentalists argue that the cooperative arrangements nation-states establish possess different degrees of autonomy and power (Hoffman, 1966, p. 909). Yet, in all of them, nation-states are the most important actors. They initiate, set the pace and oversee the progression and extent of regional integration and therefore, they are strengthened, rather than weakened by the occurrence of this process (Pollack, 2010, p. 19). For intergovernmentalists, regional integration is merely a means to an end. It creates a favourable context for the pursuit of the national interests of states, while preserving their autonomy (Taylor, 1984, p. 594).

### 3.3. THE RELEVANCE OF THE DEBATE

The proponents of these theories thus disagreed on various issues. For example, intergovernmentalists contend that national governments are the actors fundamentally structuring the process (Taylor, 1982) while neofunctionalists point instead at regional institutions (Schmitter, 2002). Likewise, neofunctionalists claim that once regional institutions

have acquired some degree of policy-making capacity it is difficult for national governments to hinder, reverse or even halt the process (Lindberg and Scheingold, 1970; Schmitter, 1970). Meanwhile, intergovernmentalists contend that despite attempts of regional institutions to expand the process there are limits to it, and such limits are imposed by nation-states (Taylor, 1983; Hoffmann, 1995). The debate on these and other issues between the proponents of these theories would constitute the basis of research on regional integration for approximately the next two decades –with none incontestably asserting their dominance over the others.

While neofunctionalists and intergovernmentalists disagreed on various issues, probably their most important agreement was on the nature of regional integration. In contrast with previous approaches, which regard integration as a means or an end, neofunctionalism and intergovernmentalism concur that regional integration is a political *process*. They argue that this process occurs among politically sovereign yet economically interdependent nation-states and results from the calculations of rational actors on the anticipated returns from their participation in joint decision- and policy-making structures (Schmitter, 1970, p. 842). It consists in the creation and establishment of rules –in the form of practices or policies– for all the actors involved in the process (i.e. national governments, regional institutions and ‘social’ actors). At all times, these actors use the rules to further their own interests, and so the process develops. For the purposes of this thesis, all other arguments of these theories are secondary to their agreement on the nature of regional integration as a process.

In spite of their differences, the fact that both theories regard integration as a process distinguishes them from other theoretical approaches. These two theories are more concerned with explaining the *occurrence and development* of the process than with the polity it creates (Diez and Wiener, 2009). Neofunctionalism and intergovernmentalism only focus on the integration process itself rather than on its structural outcomes or its normative considerations.<sup>23</sup>

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<sup>23</sup> By structural outcomes, I mean the kind of polity that regional integration creates. Some of the questions guiding research on these issues are what kind of polity has integration created and where is it leading. Meanwhile, by normative considerations, I mean the critique of the direction and implications of the phenomenon of regional integration. Some of the questions guiding research on these issues are whether the current or future polity is desirable or whether a different kind can or should be envisaged.

Hence, for neofunctionalism and intergovernmentalism the main research questions are ‘what is integration and what are the factors driving it?’ This firm stance from both neofunctionalism and intergovernmentalism on the priorities of the research agenda on regional integration, carried on through their succeeding approaches: Liberal Intergovernmentalism and Supranational Governance.

### 3.4. FURTHERING THE DEBATE: SUPRANATIONAL GOVERNANCE AND LIBERAL INTERGOVERNMENTALISM

Liberal Intergovernmentalism (LI) and Supranational Governance (SG) offer two different explanations for the same phenomenon –European integration. Both theories elaborate on the logic and mechanisms behind the integration process and provide different answers to the questions of why and how national governments transfer significant policy-making prerogatives to common institutions. To understand this divergence in the conclusions of these theoretical approaches, I outline and discuss their main concepts, claims and hypotheses. These approaches constitute the basis of the theoretical framework I present in this thesis.

#### 3.4.1. SUPRANATIONAL GOVERNANCE (SG)

##### MAIN CLAIMS AND ASSUMPTIONS

Most scholars of regional integration recognise the contributions of neofunctionalism to the field of Regional Integration Theory. Yet, most of them also dismiss the prospect of reviving or revising it (for recent exceptions see Schmitter, 2002; Niemann and Schmitter, 2009).<sup>24</sup> Despite this general reluctance to revive or revise neofunctionalism, Stone Sweet, Fligstein and Sandholtz (2001) considered that its core concepts and claims could still inform new, more theoretically developed approaches.

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<sup>24</sup> While the reasons for this relative lack of interest in furthering neofunctionalism differ, Down (2008), Niemann and Schmitter (2009) argue that the constant and ad hoc revisions and reformulations of functionalism (and neofunctionalism itself) prevented the elaboration of a coherent approach that introduced concrete concepts and persuasive theoretical claims. Niemann and Schmitter further argue that neofunctionalism failed in its attempt at grand theorising. They claim that its purported ability to explain all integration processes regardless of place and time was ultimately unattainable (p. 47). Some others point at its deterministic nature, which failed to anticipate or explain the cases of the stagnation or even digression of the process in various regional contexts, including Europe. The consensus was that these problems had constrained the explanatory power of the theory and therefore had undermined neofunctionalism as a whole.

The most prominent of these new approaches is Supranational Governance (SG), a theory that builds on the neofunctionalist conception of integration as a gradual process of political change (Risse-Kappen, 1996, p. 55). As neofunctionalism does, SG regards integration as the result of increasing economic interdependence and pluralist, interest-driven politics among nation-states, and provides empirical insight into the potential of supranational policy-making to advance and expand a regional integration process (Stone Sweet and Sandholtz, 1998, pp. 5-6). Further, SG identifies in neofunctionalism three of its own constituent elements: “the development of a transnational society, the role of supranational organisations with meaningful autonomous capacity to pursue integrative agendas, and the focus on European rule-making to resolve international policy externalities” (Stone Sweet and Sandholtz, 1998, p. 6). While recognising that these elements are ‘prefigured’ in neofunctionalism, SG contests some of the central tenets of such theory. One of the most important differences between neofunctionalism and Supranational Governance lies in the conception and rationale of the integration process. SG defines integration as “the process by which the horizontal and vertical linkages between social, economic and political actors emerge and evolve” (Stone Sweet and Sandholtz, 1998, p. 9).<sup>25</sup> This definition might be ambiguous if it is detached from the rest of the theory. However, the most important contribution of SG to the understanding of integration is not its conceptualisation but the explanation of how such process unfolds.<sup>26</sup>

In neofunctionalism, integration is essentially understood as a dynamic of transfer of policy competences from the national governments to the supranational bodies that is “fundamentally driven by the logic of functional self-sustaining processes” (Risse-Kappen, 1996, p. 55). That is,

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<sup>25</sup> Here, ‘linkages’ are defined as the stable relationships or patterned interactions that exist or emerge between those actors. ‘Vertical’ is understood as the interactions between actors organised at the supranational level and those organised at or below the state level and ‘horizontal’ are the interactions between actors organised in one state with actors organised in another (Stone Sweet and Sandholtz, 1998, p. 9).

<sup>26</sup> Stone Sweet and Sandholtz stated that the starting point of their theory is the Treaty of Rome and, therefore, they “do not explain the founding of the EC” (1998, p. 2) but merely explain its mode of governance (1998, p. 5). This line of reasoning left an important gap in the theoretical framework of SG, as it failed to explain why integration occurred in the first place. In subsequent works, Stone Sweet, Fligstein and Sandholtz acknowledged this shortcoming. They argued that “the question of how supranational arenas emerged and were [consolidated had] claimed a good deal of our collective attention” (p. 3), and consequently, they had failed to provide an explanation for the occurrence of integration. Therefore, the authors addressed this issue in *The Institutionalization of Europe*. For the purposes of this thesis, I take both the original and revised propositions of Supranational Governance as one single theoretical framework and present it as such, although this is not the case.



an initial issue-specific pooling of sovereignty in supranational bodies leads to their increased involvement in policy-making processes that in turn leads to an expansion of supranational political power vis-à-vis national governments in other policy arenas. Supranational Governance contests this understanding of integration as a regular, autonomous, unidirectional process. In contrast to neofunctionalism, SG argues that the integration process is *not* automatic. Instead, integration is seen as a process of an uneven nature that varies significantly over time and across policy domains as a result of disparate levels of policy coordination (Stone Sweet and Sandholtz, 1998, p. 8). This understanding of integration constitutes the basis of SG's claims and account on the nature, pace and scope of the process.

According to SG, integration results from increased economic and financial exchanges between countries, i.e. trade, investment, production and distribution, in the context of growing international interdependence. These exchanges give rise to a transnational society, that is individuals and groups who need and use common standards and rules and dispute-resolution mechanisms (Stone Sweet and Sandholtz, 1997, p. 306). However, as profitable to transactors (and consequently national states) as these exchanges might be, any potential increase in their amount or value is limited by the existence of disparate national rules and the lack of transnational regulations governing cross-border transactions and activities. The existence of cross-border regulation facilitates the increased engagement of individuals, groups and firms in transnational exchanges. Therefore, those actors who transact across borders and benefit from the existence of common rules, as well as those who are disadvantaged by the maintenance of disparate national rules (Sandholtz and Stone Sweet, 1998, p. 4), start to demand the making of rules that go beyond the national realm (i.e. supranational rules).

If such demand is not met costs rise for the actors involved in transnational exchanges and so do incentives for supranational policy-making. In response to these demands, national governments may agree to establish rules, along with regional institutions to maintain and promote further

exchange across national borders (Stone Sweet and Sandholtz, 1998, p. 2).<sup>27</sup> In this context, regional institutions construct supranational governance in order to promote the interests of the international society among governments and enhance their own autonomy and influence (Stone Sweet and Sandholtz, 1998, p. 26). This process is understood to result in integration that goes beyond that originally expected or agreed to by national governments. Further integration is provoked and sustained by this same dynamic which SG scholars call ‘institutionalisation’.<sup>28</sup>

Stone Sweet and Sandholtz understand institutionalisation as the process by which rules are created, applied, interpreted and modified by those who live under them (1998, pp. 16-17). They maintain that the ‘logic of institutionalisation’ is at the core of the Supranational Governance approach, and that rule-making is in turn at the core of such logic (1998, p. 16). Rules define who is an actor in the integration process and how those actors behave. At any given moment, all actors (i.e. governmental, supranational and transnational) take rules as given. Therefore, acting in a rational and self-interested way, they define their interests, objectives and tactics within the framework defined by such rules. They try to exploit such rules to their advantage, or to change them in order to accomplish their objectives.

#### GOVERNMENTAL, SUPRANATIONAL AND TRANSNATIONAL ACTORS IN SUPRANATIONAL GOVERNANCE

From the arguments presented, it could be claimed that SG scholars ignore or dismiss the role of national governments in regional integration processes only to put an emphasis on supranational institutions, and to a lesser extent, transnational actors. In fact, scholars like Branch and Øhrgaard (1999) make such claim. They regard SG as a mirror image of LI, which merely replaces the emphasis on national governments with an emphasis on supranational institutions. However, this would represent an inadequate interpretation of the theory. To clarify this, I will

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<sup>27</sup> Examples of regional institutions are, in the case of the EC/EU, the European Commission or the European Court of Justice.

<sup>28</sup> It is important to understand that this is SG’s interpretation of the concept of institutionalisation, and that the definition I propose in this thesis significantly differs from it.

describe the role and importance of each of these actors in the context of an integration process according to SG.

First, Stone Sweet and Sandholtz acknowledge the importance of national governments as repositories of vast material (e.g. financial) and non-material resources (e.g. legitimacy). They argue that these actors recurrently use these resources to influence and shape the policy outcomes of international negotiations (1998, p. 25). Using these resources, they engage in negotiations with other national governments, to pursue what they take to be their own interests, which they express as constituting the national interests of their countries (Stone Sweet and Sandholtz, 1998, p. 26). In the bargaining phase, national governments pursue with such great efficacy their own interests to the point that the joint policy-making process can be considered as almost completely intergovernmental (Stone Sweet and Sandholtz, 1998, p. 26).

Notwithstanding this power to influence the interstate bargaining phase, according to Supranational Governance, in other phases of the process other actors may play more important roles than national governments in the determination of the extent, direction and pace of integration. The rationale behind this argument is the following: governmental actors (i.e. nation-states) might not be perfectly informed on the progression and direction of the process, but instead might be responding to demands derived from increased cross-border transactions, which if left unaddressed might hinder gains previously achieved. Such demands originate from transnational actors and are furthered and delivered by supranational actors.<sup>29</sup> Their demands for the establishment (or expansion) of supranational rules *catalyse and sustain the integration process* (1998, p. 4). It is because of these demands, as well as the social, economic and political exchanges in which these non-state actors engage, that the transnational society can influence, directly or indirectly, policy-making processes and outcomes at the regional level.

While it is possible for governmental actors to possess information not available to transnational or supranational actors, in the view of Supranational Governance theorists, it is also possible for

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<sup>29</sup> In SG, transnational actors are referred to as “transnational society” (Stone Sweet and Sandholtz, 1998, pp. 5,9). This term encompasses the groups of individuals, networks and associations who transact across borders, and who are disadvantaged by the existence of disparate national rules in specific policy domains (1998, p. 9).

individuals, groups and firms who engage in cross-border exchanges to possess better information on the actual progression and direction of the process. In such situations, a critical concern for these members of the transnational society is to utilise this informational asymmetry to their advantage in order to advance their demands to national governments. It follows that transnational entrepreneurs have great incentives to lobby state officials to improve and advance existing supranational rules and create new ones (Fligstein and Stone Sweet, 2002, p. 1207), not for the sake of furthering the integration process itself but to maintain and expand the autonomy, security, certainty and efficiency of the transnational exchanges in which they engage.

Supranational institutions help transnational actors to push forward, deliver coordinative policies and even devise new ones. Because supranational institutions possess jurisdiction over specific policy arenas within the territories of the member-states, they are capable of constraining and shaping the behaviour of all actors, including national governments, within those arenas (Stone Sweet and Sandholtz, 1997, p. 303). Although supranational institutions are initially created to facilitate transnational exchanges between economically interdependent countries, once constituted they begin to further integration by promoting additional transnational exchange, promoting the creation of new policies within existing policy arenas, and constructing new ones (Stone Sweet and Sandholtz, 1998, p. 2).

In this respect, it could be argued that national governments have given supranational institutions different degrees of competence across the range of policy arenas and, depending on the arena, they have allocated a corresponding amount of policy-making capacity for them. However, supranational institutions still manage to promote the creation of new policies within existing policy arenas, and even the construction of new arenas, using the expertise and information they receive from transnational actors. In doing this, they acquire legitimacy, bolster their authority and gain a form of relative autonomy vis-à-vis national governments (Stone Sweet and Sandholtz, 1997, pp. 300,304).<sup>30</sup> Moreover, through their participation in

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<sup>30</sup> This is another fundamental difference between neofunctionalism and Supranational Governance. neofunctionalists consigned to supranational institutions the role of agents “promoting the transfer of elite loyalties to the European level and ‘honest brokers’ in [the negotiations] between recalcitrant national governments” (Haas, 1958, cited in

policy-making, supranational institutions also contribute to consolidate the policy arenas that the national governments created in the first place. In sum, supranational actors contribute to the promotion and consolidation of supranational policy-making –obvious as this may sound– in the pursuit of their own interests (e.g. increased budget, increased policy-making capacities, etc.).

To conclude, it is necessary to return to the analysis of governmental actors and see how all these considerations influence their actions and, ultimately, modify their behaviour. According to Stone Sweet and Sandholtz, in the integration process, national governments, “have their own interests, which may include maximising their autonomy and control over resources” (1997, p. 306), and because of that, they may resist the shift towards supranational policy-making. However, if they did so, they would inhibit the generation of wealth within their own territories by those actors who depend on cross-border transactions. Resisting the move towards supranational rule making can thus only be done at the expense of economic well-being. National governments may even “attempt to slow integration or push it in directions favourable to their perceived interests, but they do not drive the process or fully control it. Governments are [thus fundamentally] reactive, constantly adjusting to the integration that is going all around them” (Stone Sweet and Sandholtz, 1997, p. 306). In sum, according to SG, while understanding the actions of national governments is indeed important to explain regional integration, the main actors in the process are transnational and, more importantly, supranational actors.

#### INSTITUTIONALISATION AS THE CORE OF SUPRANATIONAL GOVERNANCE

So far, I have shown that SG understands integration as a process that evolves through time. I have also shown that multiple actors take part in this process, and that these are not restricted to the domestic political realm (Niemman and Schmitter, 2009, p. 47). I will now try to demonstrate how, according to Supranational Governance, *institutionalisation* constitutes the core mechanism determining the occurrence and sustenance of integration.

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Cram, 2001, p. 57). Adhering to a rationalist and self-interested explanation of their behaviour, Supranational Governance argues instead that institutions contribute to advance the demands of the transnational society in order to bolster their own powers.

In their first major collaborative work, SG scholars aimed at proposing a theory that explained why regional integration was occurring in Europe and “why shifts toward supranational governance tend to generate additional movement in the same direction, or at least make it difficult to reverse the shifts that have already occurred” (Stone Sweet and Sandholtz, 1998, p. 16). I argue that the objective of SG scholars was then two-fold: to explain why common rules are put in place between nation-states and why those rules shift political power away from national governments onto supranational institutions –at times, without national governments wanting it or being able to reverse it (Stone Sweet and Sandholtz, p. 16). To answer these two questions, SG scholars put forward the concept of ‘institutionalisation’.<sup>31</sup> According to SG, understanding the concept of institutionalisation is crucial to understanding integration. This ‘dynamic’ has permitted rules to evolve from a limited number of weak legislations, jointly established by national governments, to a rising amount of practices that create new legal rights and establish new policy arenas. It is also this dynamic what has created a dense and elaborate set of legislations and practices that both formally and informally govern the interactions of all actors in the process (Stone Sweet and Sandholtz, 1998, pp. 10,18).

This dynamic, therefore, does not swiftly emerge after the specification (through intergovernmental accords) of the competences of supranational organisations over determined policy domains. Rather, it is seen as the result of many years of constant interaction between transnational actors and national and supranational officials, and their use, interpretation and, eventually, modification of cross-rules. In this sense, the most important effect of the institutionalisation dynamic is that it produces regularities in the behaviour of actors, therefore giving coherence to the activities of the incumbents, in the context of a given social space. In the case of regional integration, this effect is interpreted as the making and use of rules and

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<sup>31</sup> SG scholars introduced the concept of institutionalisation in their works in a scattered manner, to the point that it can be argued that it was disjointed from the overall explanation of why integration occurs (see Stone Sweet and Sandholtz, 1997; 1998). As mentioned, SG scholars acknowledged that in their earlier works “the question of *how* supranational [policy] arenas emerged and were institutionalised claimed a good deal of our collective attention” (Stone Sweet, et al., 2001, p. 3). Therefore, they argued that they were yet to provide a more thorough explanation of *why* the dynamic process of institutionalisation occurred in the first place. To address this problem, SG scholars significantly revised, and in some instances reintroduced, the causes, rationale, and impact of institutionalisation in later works. In this thesis, however, I have introduced their works as one single and coherent argument, although this was not always the case.

procedures that exist in a specific policy space –or policy arena as I refer to it in this thesis. In a few words, the most important effect of institutionalisation is to structure current interactions between actors taking part in a regional integration process and generating patterns for future ones.<sup>32</sup>

It follows, then, that the evolution of these systems of rules cannot be anticipated, much less controlled, by the actors that established them in the first place, i.e. the national governments. Instead, SG considers that transnational entrepreneurs and supranational institutions determine the pace, direction and scope of the integration process. In this understanding, national governments are constrained by the rules whose production they cannot foresee, much less control, but which they are compelled to comply with if they want to maintain and further develop the cross-border transactions that depend on them, which ultimately derive in economic benefits for all the parties involved –including governmental actors. In their view, these rules are transformed through the occurrence of three factors:

- 1) the development of a transnational society;
- 2) the capacity of supranational organisations to pursue integrative agendas; and,
- 3) the evolution of regional-level rules.<sup>33</sup>

It was the occurrence of these factors what prompted the institutionalisation dynamic. In turn, this dynamic enabled the EC/EU to progress, from an institutional structure centred on the facilitation of trade and the elimination of market distortions, to an arrangement of practices and organisations that governs in a number of policy domains and establishes rules that are authoritative for both states and individuals (Stone Sweet, et al., 2001).

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<sup>32</sup> For a more comprehensive explanation of institutionalisation, its causes, rationale, and impact see Stone Sweet, Fligstein, and Sandholtz, 2001, pp. 1-28.

<sup>33</sup> For instance, according to SG, in the European context, these factors caused the three distinct observable phenomena that caused institutionalisation in the EC/EU: 1) rising economic transactions across borders –including increased flows of goods, services, investments and labour across national boundaries; 2) the transformation, through the continued action of supranational organisations, of the EC/EU from a trade and investment arrangement into a quasi-federal polity; and, 3) the implementation and expansion of common rules through the continued specification and re-specification of regional-level legislation –such as directives, regulations and decisions by the European Commission, etc. (Fligstein and Stone Sweet, 2001, p. 31).

Therefore, to recognise that institutionalisation constitutes the most important element determining the nature, direction and scope of the integration process is to acknowledge that this dynamic constitutes the core of the Supranational Governance approach. It is through this dynamic that supranational and transnational actors expand and consolidate the policy arenas that national governments set up through intergovernmental bargaining, thus making common policy-making *a self-reinforcing process* (Fligstein and Stone Sweet, p. 55). For instance, in the case of the EC/EU, the Treaty of Rome and the subsequent regional agreements defined the political, economic and legal order that would ease trade and further integrate the economies of the European countries. However, it has only been through the use of these rules by individuals, firms and other interested parties, that common policies and institutions have been modified, expanded and consolidated, thus pushing integration forward and away from the control of national governments. For these reasons, I see institutionalisation (rather than supranational policy-making) as constituting the core of Supranational Governance (SG). Indeed, Stone Sweet and Sandholtz state that, in their theory, the “dependent variable [is] supranational governance” (1998, p. 4).

### 3.4.2. LIBERAL INTERGOVERNMENTALISM (LI)

#### MAIN CLAIMS AND ASSUMPTIONS

According to its proponents, Liberal Intergovernmentalism is “a ‘grand theory’ that seeks to explain the *broad* evolution of regional integration” (Moravcsik and Schimmelfennig, 2009, p. 68). In the words of one its major proponents, the theory constitutes an effort to provide a less complex, yet more parsimonious explanation (i.e. than neofunctionalism) for the form, substance, and timing of the *major* steps towards European integration (Moravcsik, 1998, p. 4). In this sense, LI does not attempt to explain the whole of the regional integration phenomenon, but to theoretically synthesise and resolve its most important conundrum: why sovereign national governments in Europe have chosen repeatedly to pool their sovereign prerogatives in a



supranational institution, the EC/EU (1998, p. 1).<sup>34</sup> To answer this question, Moravcsik introduces a rationalist framework that proposes to disaggregate the occurrence of the integration phenomenon into a causal sequence of stages, each explained by a separate theory. In order to understand Moravcsik's core argument it is necessary to introduce such rationalist framework.<sup>35</sup>

In the view of LI, integration is a *process* by which national governments, acting in a rational and instrumental manner, decide to coordinate, delegate or pool their policies in, within, or towards a supranational institution. As previously mentioned, LI considers the nation-state as a rational actor, and thus sees the action of national governments as the result of deliberate choices: governments transfer sovereignty to international institutions in order to enhance their decision-making capacities in relation to incentives provided by the changing structure of the global economy (Moravcsik, 1998, p. 3). In contrast with other theories, LI does not consider the establishment of supranational institutions to be a constraint to the capacities of the nation-state. Quite the opposite, LI sees the emergence of supranational institutions as the result of an effort by national governments to secure their mutual cooperation –and thus strengthen their position– to reap economic benefits in areas “where potential joint gains are large, but efforts to secure compliance [...] through domestic means are likely to be ineffective” (Moravcsik, 1998, p. 9).

In order to explain the ways and means by which national governments negotiate and eventually agree to cede sovereign capacities, LI builds on three core ideas: the assumption of rational state behaviour, a liberal theory of national preference formation and an intergovernmentalist analysis of interstate negotiation (Moravcsik, 1993, p. 480). In other words, it derives its analysis of integration from the following assumptions:

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<sup>34</sup> Although Moravcsik refers to the EC/EU institutions as international, in order to maintain coherence in the use of the concepts throughout this thesis, I will refer to them as ‘supranational’ or ‘regional’ institutions, without necessarily implying a reference to or endorsement of Supranational Governance.

<sup>35</sup> By rationalist framework, Moravcsik refers to the series of rational choices that explain the decision of national governments to cede or pool policy-making authority.

- 1) national governments –the major players in such process– act in a rational manner;
- 2) they set their bargaining objectives through the aggregation of demands of domestic groups using national political institutions, hence, in a liberal way; and,
- 3) taking into account the constraints and opportunities created by the preferences of other national governments, they deliberately engage in negotiations with each other, in order to reach binding agreements which allocate all possible gains.

Despite these rational actions and decisions, the pursuit of an integration process also brings along a potential for distributive conflicts between states over the division of economic gains. As it is likely that some states will gain more than others from integration, they would be more affected if other governments defected from cooperation agreements. To address this issue, LI puts forward the establishment of supranational institutions as lock-ins of the commitments made.

According to LI, the construction of supranational institutions is the result of the occurrence of three factors: the convergence of state preferences, the relative bargaining power of such states, and the credibility of their commitments. This entails that whenever a group of states engage in an integration process, there are gains to be made by all parties involved. Even if the gains of some state are larger than the gains of others, they *all* gain. From this assertion, it follows that despite these collective gains, it is expected that the outcomes of negotiations will vary greatly (i.e. over time and across issue areas), as they will all reflect the relative economic power of the states involved in the process and the patterns of interdependence existing between them. Finally, to secure the agreements they have reached and to commit one another to future cooperation, national governments delegate and/or pool sovereignty in common institutions (Moravcsik, 1998, p. 4). Whenever this long stop-and-go process of definition of national preferences, interstate bargaining and establishment of supranational institutions is completed, integration advances.

## GOVERNMENTAL, SUPRANATIONAL AND TRANSNATIONAL ACTORS IN LIBERAL INTERGOVERNMENTALISM

As noted above, Liberal Intergovernmentalism provides an explanation for the establishment and maintenance of supranational institutions in the context of regional integration processes. Nonetheless, it plays down the role of other actors involved, including supranational institutions, and their relative importance in the integration process with respect to state actors. To understand LI it is important to understand who is an actor according to the theory.

In brief, in LI's understanding, supranational institutions constitute utilitarian actors whose role in the process is reduced to the enhancement of the actions of national governments, but who play no significant role themselves. Supranational institutions are created and exist only to enhance the credibility of intergovernmental commitments and to reduce the transaction costs of intergovernmental negotiations (Moravcsik, 1998, p. 9). In LI's consideration, supranational institutions are thus mere "passive sets of rules" (Moravcsik, 2006, p. 292). Despite their contribution to the reduction of transaction costs and the stabilisation of ever-changing sets of expected gains by national governments, they play no crucial role in the furthering (or deepening) of regional integration. Given that the pace and direction of the integration process is solely determined by the collective will of member state governments, supranational institutions merely play a subservient role limited to ensuring and maintaining the "contractual environment conducive to efficient intergovernmental bargaining" (Moravcsik, 2006, p. 292).

Likewise, Liberal Intergovernmentalism downplays the role in the integration process of what it calls transnational entrepreneurs (Moravcsik, 1998, p. 347). It is difficult to tell from LI texts what the concept of 'transnational entrepreneurs' is. In fact, in the term 'transnational entrepreneurs', LI occasionally combines the concepts of transnational actors (i.e. transnational-organised businesses and interest groups) and supranational actors (i.e. regional institutions and their heads), thus blurring the line between both types of actors (see Moravcsik, 1998, p. 53, 347; Moravcsik and Schimmelfennig, 2009, p. 71, 75). In any case, LI dismisses any role for

them in the integration process. While supranational actors are *not essential* because their actions “tend to be futile and redundant, [and] even sometimes counterproductive” vis-à-vis those of national governments, transnational actors are almost irrelevant to the theory (Moravcsik, 1998, p. 8; also see, p. 53, 157). This reasoning is based on two arguments. First, the demands and activities of the would-be transnational entrepreneurs have already been subsumed in LI’s model of national preferences formation.<sup>36</sup> Second, in LI’s understanding of interstate bargaining, information and ideas required for efficient bargaining are widely available and easily acquired by states (Moravcsik and Schimmelfennig, 2009, p. 71).

With respect to the first argument, LI views national preferences –that is, the fundamental policy goals of national governments– as determined solely through contention between social, political and economic groups within the domestic realm. Even domestic actors with transnational interests –or, in other words, with a stake on the maintenance and furthering of integration– take part in this discussion within their own national realms. These preferences are aggregated through domestic political institutions and they become objectives (i.e. national preferences) that states aim to accomplish in international negotiations (Moravcsik, 1998, p. 22; Moravcsik and Schimmelfennig, 2009, p. 69). It is in the negotiation of interstate agreements when states acquire the characteristics of unitary and (nearly) perfectly rational actors. Having set their preferences and objectives on all aspects of the policy arenas in question, they have evaluated all existing policy alternatives available to them and have already pondered in great (and, for the most part, accurate) detail the potential gains and losses those alternatives will bring about (Moravcsik, 1998, p. 492). Finally, having calculated the utility of alternative scenarios and courses of action, national governments choose the one that maximises their utility and, then, efficiently pursue it without the intervention of third parties (Moravcsik and Schimmelfennig, pp. 68,71).

LI’s second argument against the relevance of transnational entrepreneurs stems from its view of nation-states as the best informed of all actors taking part in the integration process and thus

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<sup>36</sup> It is important to understand that for LI, those who SG would consider transnational actors, are neither transnational nor actors, hence the use of the ‘would-be’ term.

as the best equipped to control its pace, direction and outcome (Moravcsik and Schimmelfennig, 2009, p. 71). In this way, LI challenges the neofunctionalist (and implied SG claim) that supranational actors exercise influence over the process through the manoeuvring of information and ideas.<sup>37</sup> LI rejects this argument, claiming that other actors rarely possess information or expertise unavailable to national governments (Moravcsik and Schimmelfennig, 2009, p. 71). According to Moravcsik, information and ideas required for efficient bargaining are plentiful and cheap, because the range of options on potential agreements, national preferences and institutional arrangements are assumed to be common knowledge among governments (1998, p. 61). In this understanding, national governments have all the technical, political, and legal information they require to conduct efficient bargaining in intergovernmental negotiations. Moreover, Moravcsik claims that this assumption is plausible, given that state officials have large financial and technical resources to generate and retrieve extensive amounts of information. National governments, initiate, mediate and mobilise large amounts of resources towards negotiations. Thus, negotiations are “likely to be efficient”, as governments have a strong incentive to reveal their preferences in the form of bargaining demands and compromise proposals, due to their common interest in securing agreements and the economic gains that result from them (1998, p. 61).

In this understanding, given the availability of information and ideas, states are seen as quite capable of easily setting agendas, mediating compromises and mobilising social support without the intervention of third parties –least of all transnational entrepreneurs.<sup>38</sup>

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<sup>37</sup> In this specific critique, Moravcsik does not seem to differentiate between the theoretical claims of neofunctionalism and Supranational Governance, to the point of taking for granted that the critique and dismissal of one approach automatically dismisses the claims of the other (see 1998, pp. 54-60). At this point, however, this theoretical entanglement will be equally overlooked, so as not to interfere with the development of the core arguments of LI.

<sup>38</sup> Whether such wide availability of information contributes to *attain efficient policy outcomes* beyond the interstate negotiation stage is an issue that is overlooked, or at least not discussed, by Moravcsik. In this respect, I argue that although national governments might possess sufficient or all the information and ideas required for efficient bargaining (Moravcsik, 1998, p. 61), this does not entail that they possess sufficient or all the information and ideas needed for achieving efficient policy outcomes after the bargaining stage.

## INTERGOVERNMENTAL BARGAINING AS THE CORE OF LIBERAL INTERGOVERNMENTALISM

As shown above, Liberal Intergovernmentalism privileges governmental over supranational actors in the integration process, and dismisses any role for transnational actors. In short, LI considers regional integration to be the result of rational decisions by national governments, and more specifically heads of state, to transfer (or withhold) sovereignty over certain policy domains in the context of economic opportunities and constraints. In this understanding, the collective decisions of national governments fundamentally determine the progress (or lack thereof) of integration. The broad lines of integration are thus determined by the convergence of interests of national governments on the allocation of economic gains. Therefore, the most important mechanism in the integration process is that through which national governments agree to coordinate their policies to reap the economic benefits of such coordination. This mechanism is intergovernmental bargaining.

Although the coordination of policies involves the reaping of potentially substantial benefits to the parties involved, it also implies the emergence of significant distributional conflicts within and between states. For common policies to be established, preferences on them have to first emerge from the competition at the domestic level between interests of specific sectors and distribution of expected adjustment costs among the parties involved. Once these national preferences are set, this process takes place again, however, this time between national governments.

In this phase, in order to allocate the potential gains of integration, governments engage in a process of collective bargaining, which consists in the exchange of information, promises and threats. Because in this process all states aim at maximising their gains, power and welfare, interstate conflicts –in other words, disagreements– will occur. Such conflicts can thus only be resolved through hard interstate bargaining in which all states, having calculated individual costs to and constraints on the joint reaping of economic benefits, use their relative bargaining power to gain the most from integration. Therefore, as Bromley points out, integration is seen as

a process “largely concerned with extending their collective powers to do things that cannot be done individually at the national level” (2001, p. 288). However, this does not entail that benefits will be evenly distributed or that every state will commit the same amount of powers or resources to achieve such common gains. It will be only through intergovernmental bargaining that the terms of such cooperation come about, which will depend on the relative power of the parties involved (Moravcsik and Schimmelfennig, 2009, p. 71).

It follows that in these grand bargains:

The distributive outcomes [reflect] the relative power of states based on patterns of asymmetrical interdependence. Those who gained the most economically from integration, relative to unilateral and collective alternatives, compromised the most on the margin to realise gains, whereas those who gained the least (or for whom the costs of adaptation or alternatives were the highest) tended to enjoy more clout to impose conditions (Moravcsik, 1998, cited in Moravcsik and Schimmelfennig, 2009, p. 71).

It is thus through the mechanism of intergovernmental bargaining that national governments accomplish the objectives that had been set for them through domestic contention. It is also through this mechanism that the institutions that will secure the common gains are defined and put in place. Therefore, I claim that intergovernmental bargaining constitutes the core of Liberal Intergovernmentalism.<sup>39</sup>

### 3.5. CONSIDERATIONS ON THE CHOICE OF LIBERAL INTERGOVERNMENTALISM AND SUPRANATIONAL GOVERNANCE

Before proceeding with the development of this thesis’ theoretical framework, it is important to comment on the choice of the theoretical approaches that I use, apply and attempt to further in this thesis. As previously stated, I use Liberal Intergovernmentalism and Supranational

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<sup>39</sup> Malamud makes the same claim about Liberal Intergovernmentalism (2005, p. 7). However, in his analysis, he does not establish the reason why he considers intergovernmental bargaining as the central mechanism of the theory or the bargaining stage as the most important one in the process of regional integration.

Governance. This choice is based on the agreement between these theories and their concurrence with the objectives of this thesis. In exchange with other theoretical approaches, LI and SG raise and attempt to answer the questions of why and how does integration occur and proceed over time (see Stone Sweet and Sandholtz, 1998, p. 3; Moravcsik and Schimmelfennig, 2009, p. 68).

Furthermore, these theories regard integration (and aim to explain it) as a process rather than a looked-for or end state. They do not attempt to determine the typology, discuss the normative concerns, or explore the “ideational aspects” of the occurrence and development of a regional integration process (see Macdonald, 2011, p. 123).<sup>40</sup> In the view of their authors, doing this would compromise the construction of their corresponding theoretical frameworks and the accuracy of their empirical predictions. Instead, both LI and SG attempt to provide a general theory of (European) regional integration, which focuses on key moments or dynamics, defines key concepts, discusses causal relationships between variables and provides supporting empirical evidence to its claims. To do this, they identify variables that attempt to explain “variation across important policy areas, across time and across different institutional settings” (Caporaso, 1998, p. 335). Caporaso argues that, given these characteristics, both theories can be considered as specific enough to propose variables, yet general enough for their empirical results to reassemble at more abstract level (1998, p. 335). In his view, LI and SG are not “overly abstract” theories, inasmuch they do not override differences in national contexts, policy areas or historical circumstances. They are only abstract enough to allow the development of coherent explanations of complex and constantly changing phenomena (Caporaso, 1998, pp. 335,343).

It is because of such characteristics that LI and SG provide a solid basis for use in other regional contexts. In the view of their authors and commentators, the conceptual and theoretical frameworks of these theories can be used in comparative studies and they have even encouraged

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<sup>40</sup> By ‘ideational aspects’, Macdonald refers to concepts, such as region and “regionness”, which she claims are socially and discursively constructed and which might contribute to the construction of national interests (2011, p. 123). Yet, given that Macdonald fails to explain the meaning of these concepts or their theoretical significance, I do not focus on these ‘aspects’, which she and other like-minded scholars have proposed.



other scholars to use them in such way (see Caporaso, 1998, p. 342; Moravcsik, 1998, pp. 494-496). For instance, Moravcsik claims that the theoretical and methodological conclusions that have emerged from the European experience on regional integration can and should be used to conduct research on a phenomenon that is more advanced in Europe than elsewhere in the world, but by no means unique to it (1998, p. 500). Likewise, Mattli and Stone Sweet agree that the European experience “comprises only one case of regional integration” (2012, p. 3).

Therefore, both LI and SG scholars agree that researchers can use the frameworks of these theories in other regional contexts. In their view, only through the use of such general theories and shared concepts can scholars “transfer appropriate lessons from case to case” (Moravcsik, 1998, pp. 500-501). Similarly, Mattli and Stone Sweet conclude that the European experience on integration is of special importance as “extensive research on its evolution has generated concepts, hypotheses and methods that presumptively apply to all regional arrangements” (2012, p. 3). It can be thus argued that authors and commentators of LI and SG have not only deemed possible to use these theories in non-European contexts, but have actually encouraged such use to evaluate and further advance their conceptual and theoretical frameworks. For instance, Moravcsik claims that a preliminary analysis of the regional integration process in North America, confirms the arguments he advances in his various academic works (1998, p. 494). Based on these arguments, I thus use Liberal Intergovernmentalism and Supranational Governance to build this thesis’ theoretical framework.

# CHAPTER 4:

## THEORETICAL FRAMEWORK

## 4. THEORETICAL FRAMEWORK

### 4.1. THE CONSTRUCTION OF THE THEORETICAL FRAMEWORK

In this thesis, I disaggregate the phenomenon of regional integration into three different stages; namely, the *creation*, *expansion* and *consolidation* of common policy arenas. I analyse each of these stages separately using Liberal Intergovernmentalism and Supranational Governance. In each of these stages, I introduce a independent variable that I posit accounts for the occurrence of the overall outcome, i.e. the dependent variable. I argue that this variable can be measured by examining the incidence of certain factors in each stage, notably: the number of rules in the intergovernmental agreements for the creation stage; the number of citizen inputs for the expansion stage; and the number of successful citizen inputs for the consolidation stage. As this is a multicausal framework (many variables account for one outcome), each one of these variables is grounded in a general theory of political behaviour and is thus oriented towards the analysis of the purposive actions of actors and their effect on the process (Moravcsik, 1998, p. 15).

In following this rationalist approach, I agree with Moravcsik that I will be able to analyse and apply the two theories (LI and SG) to each separate stage and thus, to “distinguish more rigorously between those theories that [...] compete to explain the same stage of [the process] and those that explain different stages” of it (1998, p. 20). In doing this I have also been careful not to combine or misrepresent the main claims and assumptions of these theories, nor to lump them together to form a grand theory of integration (Diez and Wiener, 2009, p. 17). Quite the opposite, I have attempted to determine which theory offers a better explanation of each individual stage of the different common policy arenas evaluated in this thesis (i.e. cooperation on environmental, labour and FDI protection).

In this analysis, and given the time and space constraints inherent to the thesis, I have simplified and reduced these theories to their core mechanisms. This is, Liberal Intergovernmentalism is understood essentially as intergovernmental bargaining, and Supranational Governance as

institutionalisation.<sup>41</sup> Determining what constitutes the core mechanism of a theoretical approach, in order to assess the strength and accuracy of its general claims, is a common practice for LI and SG scholars (see Moravcsik, 1998, p. 59; Stone Sweet and Sandholtz, 1998, p. 16). These scholars argue that if the core mechanism ‘holds’, it is likely that the theory is solid and worth assessing empirically. Correspondingly, if the core mechanism does not hold, the theory is inappropriate and likely to be disconfirmed empirically (Moravcsik, 1998, p. 59). I expect that by analysing the core mechanisms of these approaches, I will be able to “explain less at each stage [...] to explain more overall” (Moravcsik, 1998, p. 20).

## 4.2. BUILDING ON THE DEBATE BETWEEN LIBERAL INTERGOVERNMENTALISM AND SUPRANATIONAL GOVERNANCE

### 4.2.1. THE DEPENDENT VARIABLE PROBLEM

To position this thesis’ contribution to research on regional integration, I first address the issue of what Liberal Intergovernmentalism and Supranational Governance measure. Certain scholars suggest that the fact that LI and SG produced competing explanations as to why and how regional integration has unfolded is intrinsically related to these theories’ divergent understandings of the concept of regional integration (Wincott, 1995; Forster, 1999; Eilstrup-Sangiovanni, 2006; Diez and Wiener, 2009). Put simply, they argue that while both LI and SG seek to explain the integration phenomenon, they are actually explaining different things. In other words, these theories have a ‘dependent variable problem’.

As its name suggests, the dependent variable problem stems from the lack of agreement between the theoretical approaches on the definition of regional integration. This lack of agreement has led to conflicting findings of the process of integration and thus the perception of

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<sup>41</sup> It should be noted that the claim that institutionalisation constitutes the core of Supranational Governance as argued by Stone Sweet, Sandholtz and Fligstein (see 2001, p. 5-6) is contested. Indeed, as I highlight in the following section, my reading of the literature leads me to contend that the actual core of Supranational Governance is in fact ‘transnational activity’ and ‘regional policy-making’.

these theories as opposing accounts.<sup>42</sup> While both LI and SG go to great lengths to explain why the actions of either governmental or transnational and supranational actors can be said to explain the occurrence of integration within a given period of time, neither pays sufficient attention to explaining what they mean by ‘integration’. The dependent variable problem thus makes comparison problematic as it makes these theories appear as different accounts of the integration process.

Instead, I argue that these theories are not opposing accounts, but that they simply explain *different parts* of the integration process. Liberal Intergovernmentalism understands integration as the emergence, negotiation and implementation of intergovernmental treaties. As such, it focuses on the role, interests and actions of national governments within the limited timeframe during which intergovernmental bargaining occurred –i.e. the grand bargains (or agreement/treaty negotiation). Consequently, for LI, the establishment and enhancement of treaties is the *cause* of (further) regional integration. In contrast, Supranational Governance understands integration as the increased and continuous transfer of policy-making powers to supranational institutions. In this way, it focuses on the broader socioeconomic exchanges that occur between transnational actors over time and how these exchanges in turn prompt changes in regional/supranational policy-making. Consequently, SG sees treaties as the *result* of integration (Stone Sweet and Sandholtz, 1998, p. 12).<sup>43</sup>

I thus argue that Liberal Intergovernmentalism and Supranational Governance explain different stages of the same phenomenon. These theories are then not mutually excluding but “hardly testable against each other” (Diez and Wiener, 2009, p. 17). Indeed, their lack of agreement on the outcome to be explained makes it difficult to consider them as competing explanations. What is more, the divergence in the focus of their analyses results in a self-reinforcing bias towards the role of certain actors and mechanisms in the integration process. In this way then,

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<sup>42</sup> The dependent variable problem is not exclusive to Liberal Intergovernmentalism and Supranational Governance. Haas identified and described the same problem in neofunctionalism and intergovernmentalism and called for proposals to address it (see Haas, 1970, p. 622).

<sup>43</sup> According to Stone Sweet and Sandholtz, Supranational Governance only explains the development of regional integration. In the case of Europe, SG only focuses on the analysis of the institutional development of the EC/EU from the starting point, the Treaty of Rome, onwards (1998, p. 2). These scholars make this explicit when they claim that SG does not attempt to explain the founding of the EC/EU (p. 2).

LI's focus on the actions of intergovernmental actors during intergovernmental negotiations leads scholars to view national governments as the most important actors in the process, and to view consensus-reaching through intergovernmental bargaining as the most important mechanism to engender integration. Similarly, SG's focus on the actions of supranational actors in the context of transnational exchanges, leads scholars to view supranational actors as the most important actors in the process. This in turn, leads them to view the actions of supranational institutions as the most important for the development of integration.

#### 4.2.2. REINSTATING THE DEPENDENT VARIABLE: REGIONAL INTEGRATION

Seeing that Liberal Intergovernmentalism and Supranational Governance are essentially explaining different stages of the same phenomenon, this thesis will not treat them as mutually excluding theories. I argue that given their disagreement on the outcome (i.e. dependent variable) to be explained, their potential to explain the occurrence and development of the *general* phenomenon of regional integration has not been fully acknowledged. I thus propose to shift the analytical focus of LI and SG in order to better reflect the dependent variable that the theories ultimately attempt to explain, that is to say, regional integration. This reorientation enables a more useful analysis of the potential of each theory to account for the occurrence and development of integration, and to determine which provides a more comprehensive interpretation of the general phenomenon. Reinstating the dependent variable into my analysis of regional integration and clarifying the concept in turn enables the identification of the independent variables and the relations between them (the process).

To address this issue, I thus set out a common definition of regional integration, which builds on those put forward by Nye (1968, p. 858), Kaiser (1972, p. 213), Moravcsik (1998, p. 473), Stone Sweet and Sandholtz (1998, p. 6), Mattli (1999, p. 1) and Feng and Genna (2003; 283). I define it as the process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence by entering into intergovernmental agreements, establishing regional institutions and setting transnational rules, with the aim of enhancing cross-border exchanges and/or addressing policy externalities.

From this definition, it can be acknowledged that in this thesis regional integration is understood as a process. It is thus necessary to explain how this process begins, unfolds and further develops. As stated earlier, I contend that this occurs through the creation, expansion and consolidation of common policy arenas amongst the states involved. In the next section, I lay out this thesis' theoretical framework, which I will later use to explain the occurrence and development of North American integration.

### 4.3. THE THEORETICAL FRAMEWORK

#### 4.3.1. THE CREATION OF COMMON POLICY ARENAS AS A RESULT OF INTERGOVERNMENTAL BARGAINING

Regional integration is a process. Before it starts, there is no significant economic interdependence and therefore no (or negligible) policy interdependence between countries. Nation-states are sovereign and independently develop and implement policies within their individual territories. Even when the states interact economically and diplomatically with other nation-states in their same geographic area –e.g. through cross-border trade, limited direct investment in each other's territories or joint participation and collaboration in larger multilateral arrangements– these interactions do not have a significant impact on the making or implementation of domestic policies. Moreover, these economic and political interactions can have a significant effect on foreign policy-making, but not impact significantly on domestic policy-making. While these nation-states are *not* autarkies and conduct economic transactions across their borders, the amount or value of such transactions does not have a significant impact on the creation and implementation of domestic policies and does not lead to integration.

Increased economic interaction with other nation-states in the same region –in the form of rising intra-regional trade and foreign direct investment– subsequently creates economic interdependence between these states. This interdependence in turn leads to the growing importance of interstate economic interaction for domestic policy-making, and eventually increases the incentives for nation-states to further it. By importance, I refer to the current and

prospective volume and value of a country's cross-border trade and foreign direct investments as a share of its total trade and investment with the world.<sup>44</sup> It is anticipated that an increase in the flows of trade and foreign direct investment within a region will increase the incentives for countries to participate in or further develop (existing) economic arrangements.

The deliberate decision of nation-states to increase their economic interdependence corresponds to a series of rational choices made by national governments, and more specifically by their heads of state and government who, in turn, consistently pursue national economic interests. When the economic interests of neighbour states in the region converge, their national governments formally express their willingness to create and establish a set of regional rules to enable further economic interaction. As part of this, governments engage in bargaining to enter an agreement, which will often take the form of a free trade agreement, a customs union or a common market. The emergence, negotiation, and implementation of these agreements in turn create common policy arenas on cross-border trade and foreign direct investment. Furthermore, additional common policy arenas on other sets of policy issues may be subsequently created among nation-states to address policy externalities resulting from their economic interaction.

It is important to note that the construction of a common policy arena entails the *linking* of the domestic policy arenas of the nation-states involved, rather than their merging into a single policy arena for all states involved.<sup>45</sup> The creation of a common policy arena necessarily involves the establishment of transnational rules and a regional institution or institutions responsible for administering their implementation. At this stage, in addition to economic interdependence, there is regional integration. Therefore, there is policy interdependence.

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<sup>44</sup> Here, I prefer the use of the term prospective rather than potential. Whereas the former denotes that the occurrence of a future event or situation is expected and likely to happen, the latter denotes that such occurrence is possible but not necessarily likely to occur.

<sup>45</sup> It is perhaps helpful here to remind what is meant by the concept of 'common policy arena'. Put simply, it refers to an institutional framework for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues.



#### 4.3.2. THE EXPANSION OF COMMON POLICY ARENAS AS A RESULT OF TRANSNATIONAL ACTIVITY

The increase in transnational activity brought about by the use, application, and interpretation of regional rules by actors engaging in cross-border exchanges (i.e. transnational actors) in turn leads to the expansion of the common policy arena(s). In particular, when transnational actors encounter the limits of cross-border rules, they are likely to demand that rules are clarified or modified, call for arbitration in case of the occurrence of disagreements and, potentially, call for the creation of new rules to overcome the limitations. It is important to note that exchanges among transnational actors are not restricted to economic transactions (i.e. trade, investment, production and distribution) but also include communications on the policy externalities engendered by such transactions.<sup>46</sup>

Once transnational actors reach the limits of current regional rules, they demand the clarification, arbitration or modification of such rules. Whether the number and intensity of these demands is low or high depends on the *logic of collective action* (Olson, 1965; see also Warner and Havens, 1967); that is to say, whether the interests they pursue are particularistic (concentrated among a small group of individuals) or collective (diffuse among a large group of individuals). As Olson (1965), Warner and Havens (1967) and Reisman (1990) postulate, all individuals perform actions in a self-interested and calculatedly rational manner, and they can advance their individual interests, and usually advance them, through individual, unorganised action.

However, when some groups of self-interested, calculatedly rational individuals have a collective interest –i.e. a shared objective– common or organised action will either not be able

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<sup>46</sup> The concept of communications is grounded and present in current theories of regional integration. Stone Sweet and Sandholtz initially referred to these two concepts as the causal mechanism for which regional rules and dispute-resolution mechanisms are created. They argue that cross-border exchanges are accompanied of communications on the costs and externalities related to such exchanges. Yet, this two-part understanding of transnational ‘exchanges’ is disregarded in the rest of the Stone Sweet and Sandholtz’s works (1998) in favour of economic transactions. Fligstein and Stone Sweet (2001) bring back the argument of both economic transactions and communications on policy externalities as the causal mechanism for creating cross-border rules, even if problematically. It was until 2012, once I had concluded the development of the theoretical approaches and framework of this thesis, that Sandholtz and Stone Sweet revised their arguments and re-incorporated the concept of communications on policy externalities as a form of transnational exchange, and thus a source of integration. In doing this, Sandholtz and Stone Sweet (2012) converge on and provide further support to the arguments that I developed in this thesis.

to advance that common interest at all, or will not be able to advance it adequately (1965, p. 7). According to the logic of collective action then, such groups are or will be unable to band together effectively in order to pursue mutually advantageous objectives or prevent disadvantageous outcomes, because they do not have either the selective incentives or are too large a number to organise and advance their common interests. In this sense, small groups of individuals with common interests will tend to organise more easily and effectively than large groups of individuals with common interests. As a result, particularistic interests (i.e. interests concentrated amongst a small group of individuals) are more easily advanced than collective interests are (i.e. interests diffused amongst a large group of individuals).

It follows that, in the context of a process of regional integration, transnational actors with concentrated interests will tend to organise more easily than those with diffuse interests. Therefore, while the former will most likely be able to access national governments to demand such changes to rules, the latter will most likely be left out of the bargaining phase and later, the adjustment of such rules (Reisman, 1990, p. 212). As such, in order to advance their interests adequately, transnational actors with diffuse interests require regional institutions to demand changes. Here, regional institutions enable groups with diffuse interests to raise their demands vis-à-vis national governments, to enhance cross-border exchanges or address policy externalities that were not considered in the original bargain.

#### 4.3.3. THE CONSOLIDATION OF COMMON POLICY ARENAS AS A RESULT OF REGIONAL POLICY-MAKING

Finally, the common policy arena is consolidated as a result of regional policy-making, i.e. the creation or adjustment by regional institutions of rules that are authoritative for nation-states and their populations (Stone Sweet, et al., 2001, p. 1). The production of these rules responds to the *logic of institutional change*. As maintained by Stone Sweet, Fligstein, and Sandholtz, rules provide individuals and organisations with opportunities for purposive –that is to say, mutually beneficial interaction (2001, p. 12). However, “as interactions within a given policy arena increase, [transnational] actors may reach the limits of existing rules and seek new ones” (2001,

p. 10). As it has been established above, only two actors are able to deliver (or supply) new and improved rules within the context of the integration process: national governments and regional institutions.

National governments are by definition stable actors.<sup>47</sup> They dominate decision-making power within their territories, are repositories of material and non-material resources and their main functions are not replaced by international, multilateral or regional institutions in any way (Stone Sweet and Sandholtz, 1998, p. 25; Moravcsik and Schimmelfennig, 2009, p. 68). For these reasons, even in the context of a process of regional integration, transnational actors will continue to request national governments to deliver (or supply) new and improved transnational rules in order to regulate their exchanges across borders, to maintain the predictability and security of their economic transactions and/or address the resulting policy externalities.

Nonetheless, even in their constrained position in relation to national governments, regional institutions still manage to promote the creation of new policies within existing arenas (or even new arenas), by employing the expertise and information they receive from transnational actors on the policies needed to ease transnational exchanges further. In doing this, regional institutions acquire legitimacy, bolster their authority and gain a form of relative autonomy vis-à-vis national governments. Regional institutions use this autonomy to clarify, amend or expand the rules that national governments put in place and transnational actors use. As the demand for more and better rules increases, the costs to national governments of gathering information and setting their positions in intergovernmental negotiations on specific policy issues rise. This is accompanied by a rise in incentives to allocate or pool policy-making capacities to regional institutions. It is through this same logic that more rules are created over time and thus, the arena consolidates.

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<sup>47</sup> The claim that national governments are stable actors does not entail that national governments have stable preferences. It only entails that national governments are political and economic entities that do not disappear suddenly. Thus their nature is fundamentally different to that of other governmental (e.g. state and local governments) and non-governmental actors (e.g. firms). In this sense, the functions and responsibilities of the national governments cannot be replaced (e.g. be delegated) to other larger or smaller political entities. In brief, national governments are stable actors because they take up responsibilities and fulfil duties that other actors could not straightforwardly assume or deliver. See footnotes for a further discussion of this topic.

#### 4.3.4. INSTITUTIONALISATION

The creation, expansion and consolidation of common policy arenas are all incidences of regional integration. In this sense, it is inaccurate to assert that there is more (or less) integration in a specific common policy arena or an overall integration process than in others. For instance, it would be inaccurate to claim that there is “more” regional integration on the common policy arena on environmental protection than in that of foreign direct investment protection. In all instances, there is regional integration. It is thus not the case that an arena (or region) is more (or less) integrated. It is only more (or less) institutionalised.

I define institutionalisation as the degree of policy interdependence in a specific common policy arena. The degree of policy interdependence varies depending on the number of rules in place and the intensity of their use. A given common policy arena might be constructed and demarcated by a few regional rules (and thus be relatively unstable), by a significant number or regional rules (and thus be relatively stable), or by any other number of regional rules in between these two poles. This also implies that a common policy arena may be more (or less) institutionalised than others without the need for a concomitant development in others.<sup>48</sup>

However, regional rules are insignificant when there is no one around to use them. On this basis, a common policy arena may be created by intergovernmental agreements and yet never expand and consolidate due to the lack of transnational activity within it and/or the inability of regional institutions –and a to a lesser extent national governments– to deliver the new and improved transnational rules being demanded by transnational actors. Therefore, the intensity in the use of regional rules is as important as the number of regional rules put in place to construct and demarcate a common policy arena. The number of rules in place in an arena and the intensity in the use of those rules indicate the extent of regional integration in that specific arena. In assessing the extent of integration in a given common policy arena I argue that it is ‘institutionalised’ when there are a significant number of regional rules in place and an intense

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<sup>48</sup> Unlike neofunctionalism and Supranational Governance, this thesis does not claim that the development of rules in a common policy arena leads to ‘spill-over’ to other arenas. Whether this phenomenon has occurred or not in North America is a matter which has been explored in other scholarly works (see Cameron and Tomlin, 2000, p. 186) but that is not further analysed or discussed in this thesis.

use of such rules. Correspondingly, an arena is not ‘institutionalised’ when there are few regional rules and little use of such rules. Any other combination between these two factors is located between these two poles.

As previously mentioned, I do not set out a priori how many rules constitute ‘a few’ or ‘a significant number’ of them. Instead, I do this within the context of the analysis and discussion of each particular common policy arena analysed in this thesis, as I see no reason to impose one standard measure and thus depend on a priori theoretical commitments (Stone Sweet, et al., 2001, p. 9).

#### 4.4. RESEARCH METHODS AND SELECTION OF CASE STUDIES

In this thesis, I first established a set of guiding research questions. Based on these questions, I opted for an exploratory and qualitative approach to investigate one specific instance of regional integration: the North American case. I then engaged in a review of the current literature in order to identify and select theories that could conceivably be applied to the phenomenon. To study it in depth, I narrowed my analytical focus to one specific aspect of the creation, expansion and consolidation of common policy arenas. Within the process of regional integration in North America, one can identify three such arenas in which the nation-states have explicitly entered an agreement to set out a set of regional rules: cooperation for environmental protection, cooperation on labour issues, and protection of foreign direct investment –each of which is studied as a different, independent case study. I then identified the dependent and independent variables. As explained on section 4.2.1, I argue that current theories of regional integration have a dependent variable problem. Therefore, in this thesis, I propose to return to the analysis of the dependent variable that neofunctionalism and intergovernmentalism (and their revised approaches, Supranational Governance and Liberal Intergovernmentalism) originally aimed to explain, i.e. regional integration.

Therefore, the dependent variable in this theoretical framework is *regional integration* while the independent variables are *intergovernmental bargaining*, *transnational activity* and *regional policy-making*. The purpose of the independent variables is to examine their relative influence on the dependent variable, i.e. regional integration. That is, transnational activity is the independent variable that accounts for the occurrence and development (or lack thereof) of regional integration. I argue that doing this will enable me to re-assess current theories and propose a different explanation for the outcome of interest. In the next sections, I will thus analyse, assess and discuss the relationships between the variables in and across the three common policy arenas to provide an answer to the research questions I set out in this thesis.

To do so, I explore, analyse and explain three influential cases within each of these common policy arenas that demonstrate the relevance (or inadequacy) of the LI and SG theories. As Seawright and Gerring explain, an influential case is that whose study might be significant with regard to the use and revision of a larger cross-case theory and which aims to highlight important shifts in the progression of such case studies (2008, p. 303). Each of these cases includes a before-after component that allowed me to evaluate and establish the extent to which policy-making changed in North America after the implementation of NAFTA and its side agreements (see George and Bennett, 2004, p. 199).

Further, in the following chapters, I attempt to explain differences in outcomes across the abovementioned arenas. I expect that this will allow me to assess whether a particular political phenomenon constitutes a previously unobserved general trend, but most importantly, its principal function is to contribute to the development, testing and refining of the theory (Hopkin, 2002, p. 249). In these cases I have conducted a process-tracing analysis, in which I laid out a historical narrative of the policy framework and developments. As the analysis of each individual common policy arena progresses, the context gradually moves to the background while the variables move to the foreground, thus allowing me to introduce the model that attempts to assess whether a process of regional integration is

occurring and, if so, why and how is it occurring. By doing this, I transform a historical narrative into an “analytical causal explanation couched in explicit theoretical forms. [The cases thus focus] on what are thought to be particularly important parts of an adequate or parsimonious explanation” (George and Bennett, 2004, p. 213). In doing this, I aim to show causal processes that I argue have been overlooked by current theories, namely Liberal Intergovernmentalism and Supranational Governance.

Lastly, it is worth mentioning that this thesis considers the phenomenon of regional integration within the specific context of its occurrence in North America. This means that in assessing and analysing the creation and evolution of each common policy arena and the overall process of regional integration in North America, I have also preserved the context of each case through a brief overview of historical developments. In other words, since at the beginning of each individual case, it “is not yet clear which properties of the context are relevant and should be included in modelling the phenomenon, and which properties should be left out [...], for the time being it is better not to isolate the phenomenon from its context” (Swanborn, 2010, p. 15).

Having introduced the theoretical framework, I subsequently employed it in the empirical analysis of three different common policy arenas that constitute the study cases of this thesis. Within each case, I analysed three different instances in which rules were used by transnational actors. In doing so, I sought to determine whether policy interdependence between the three countries on these issues has expanded and how it has occurred. I anticipated significant variations across the common policy arenas under analysis, and as such, I attempted to understand and explain why such variations have occurred. Finally, I assessed whether such common policy arenas are institutionalised or not. In addition, to avoid unnecessary repetition of the way in which the NAFTA and its side agreements were conceived and negotiated between Canada, Mexico and the United States, I provided a brief background of the foundations of regional integration in North America, before moving on to the analysis of the three abovementioned common policy arenas.

CHAPTER 5:

THE FOUNDATIONS OF  
REGIONAL INTEGRATION IN  
NORTH AMERICA



## 5. THE FOUNDATIONS OF REGIONAL INTEGRATION IN NORTH AMERICA

### 5.1. INTRODUCTION AND AIMS

In this chapter I briefly outline the political and economic developments that laid out the foundations of the phenomenon of regional integration in North America. I discuss the relations existing between Canada, Mexico and the United States before the 1990s, including some of the agreements that preceded the negotiation and establishment of the North American Free Trade Agreements and its side accords, in order to show the non-existence of common policy arenas on protection of foreign direct investment, environmental protection and labour cooperation at the North American level.

Here, it is important to remember that the focus of this thesis is the proposition of a theoretical account for the overall occurrence and development of regional integration in North America. This thesis does not aim to explain the establishment of a free trade agreement between Canada and the United States (CUSFTA), the proposition of a similar agreement between Mexico and the United States, or the latter expansion of the negotiations for such agreement to include Canada (NAFTA). Detailed analyses of the context, economic rationale and interests of the North American states to pursue and establish free trade agreements are indeed available elsewhere in the literature (see, for instance, Park and Ruiz Estrada, 2010).

For instance, Whalley argues that “a wide range of considerations enter when countries seek to negotiate regional trade agreements” (1998, p. 63). The author analyses in detail the various grounds for which Canada and Mexico might have opted to negotiate and establish free trade agreements with the United States, i.e. CUSFTA and NAFTA. He argues:

Smaller countries see trade agreements with large partners as a way of obtaining more security for their access to larger country markets (as in [CUSFTA]). Some countries have tried to use regional and multilateral agreements to help lock in domestic policy reform and make it more difficult to subsequently reverse (Mexico in [NAFTA]). Other countries [yet] use regional trade agreements [...] to influence subsequent multilateral negotiation (e.g. services in CUSFTA and in NAFTA) (1998, p. 63).

Whalley goes on to discuss a range of reasons for which states might decide to pursue, negotiate and establish regional trade *agreements*, to conclude that “*regional trade arrangements* around the world are thus different from one another, not least because countries have different objectives when they negotiate them” (1998, p. 63). However, as one can see, Whalley’s research is not aimed at addressing the question of whether regional integration is occurring in North America, but “why do countries seek regional trade agreements”? (1998, p. 63).

Smith (2011) provides a very detailed summary of the various works available on the literature discussing the reasons and rationale for which Canada and the United States, pursued and established, first CUSFTA and then, along with Mexico, NAFTA. Smith indicates that some authors (e.g. Krueger, 1993, 1999) established the NAFTA for protectionist purposes.<sup>1</sup> He observes that other authors, such as Lipsey and Smith (2011), argue that NAFTA was established to induce trade diversion. Such a claim is contested by Clausing (2001), who argues that NAFTA is intended to foster rather than divert or restrict trade. Smith also discussed the works of Fukao et al. (2002) and Susanto et al. (2007), who support the view that NAFTA induces trade creation in most of the sectors in which regional trade was liberalised, and that trade diversion has only occurred in certain commodities, such as agricultural products and textiles. Smith presents, summarises and discusses all these different positions in his work (see 2011, pp. 350-371).

Similarly, Chase (2003) further analyses the economic reasons for which states might pursue regional trade *arrangements*. He argues that states pursue regional trade initiatives in order to, first, enable firms to achieve economies of scale and, second, to reap the potential gains of cross-border shared production schemes (2003, p. 138). In his work, he also challenges the claim that the motive for which states establish trading blocs is rent seeking (as a result of the diversion of trade from outside to within the region). To test these claims he analysed the actions and decisions of lobbies in the United States before and during the negotiations of NAFTA.

Some of these works have already been discussed in the review of the current literature. Moreover, other authors have already addressed the question of why the North American states pursued and established free trade agreements between them. As argued in this thesis, however, these works are centred on the analysis and explanation of the emergence and implementation of the North American economic *agreements* or *arrangements* (i.e. CUSFTA and NAFTA). These works are not centred in the analysis of the occurrence, much less progression, of policy interdependence between the North American countries. As argued in page 24, their research is limited to the analysis of the economic rationale that lead to the negotiation and establishment of free trade agreements between the three countries. In brief, these authors do not aim to explain the occurrence and development of the process of regional integration, much less its effects (or lack thereof) on the *political* sovereignty of the North American states.

More importantly, as explained in this thesis' literature review, these works do not attempt to explain the reasons for which states decide to create common rules that are authoritative for national governments and other subnational actors, nor do they attempt to explain why states enter into agreements that might constrain their political sovereignty. Instead, these scholars are only focused on explaining the rationale and decisions of states for negotiating and establishing *free trade agreements* (also referred at times as arrangements), as mentioned on page 24 of this thesis. From these works, it could be thus argued that North American *economic* integration does not require a theorisation distinct to those provided by international trade and international negotiation theories. This has resulted in deficient explanations for the occurrence and, more importantly development (of lack thereof) of political integration –or to be more specific, policy interdependence– in North America, especially on “non-economic” policy arenas.

In this thesis, I thus aimed not to reiterate arguments, analyses and information that are already available elsewhere in the literature. The abovementioned authors already conducted detailed analyses of the reasons for which Canada, Mexico and the United States decided to negotiate free trade agreements, namely CUSFTA and NAFTA. Instead, I aimed to analyse and explain whether, why and how has the overall phenomenon of regional integration occurred in North

America and whether the policy interdependence between these countries has increased or decreased over time and across different policy arenas. In light of this aim, I will briefly outline the status and record of the relations between the North American countries before the proposal, negotiation and entering into force in the 1990s.

## 5.2. RELATIONS BETWEEN THE NORTH AMERICAN COUNTRIES BEFORE THE 1990s

Before the 1990s, most observers and analysts of the relations between the US, Canada and Mexico would probably have dismissed the prospect of these three sovereign nation-states engaging in negotiations to reach a series of agreements like NAFTA and its side accords. On the one hand, Canada and Mexico had maintained amicable diplomatic relations, conducted mutually beneficial economic exchanges and even cooperated militarily with the United States (US) for nearly a century. On the other hand, Canada and Mexico had also historically been reluctant to develop closer relations with their common neighbour out of concern that such interaction would limit their sovereignty. Furthermore, these countries had an almost inexistent record of joint trilateral action. As a result, it is possible to assert that North America did not exist in economic, much less political terms before the establishment of NAFTA. In the following sections, I briefly describe the relations between the North American countries before the 1990s in order to provide some useful background context on the economic and political shift that the region underwent as a result of the negotiation and implementation of NAFTA.

### UNITED STATES - CANADA RELATIONS

Diplomatic relations between the US and Canada have been historically good. However, it is questionable whether the two states were politically or economically close before the 1960s. Firstly, the diplomatic relations between Canada and the US continued to be mediated by the United Kingdom (UK) until the late 1940s. Furthermore, as late as the 1960s, most agreements subscribed between the two countries still concerned defence or military issues. Secondly, even when Canada and the US had maintained a relationship of mutual respect and reliable

cooperation, it was not until the 1960s, that the two countries became closer diplomatically, politically and economically.

During the mid-1960s the US and Canada began to develop closer economic relations through the negotiation and implementation of the Auto Pact, which liberalised bilateral trade in automotive-related products and promoted manufacturing in this and other related sectors. The Auto Pact proposed the removal of tariffs over the trade of vehicles and automotive parts, the creation and promotion of cross-border shared-production arrangements and the consolidation of an automotive market in North America. Despite its projected positive effects, a number of actors in both countries opposed the negotiation of the Auto Pact. In the face of this opposition, the Canadian and US governments worked closely with and aided each other in their efforts to garner support and push the Pact through their individual legislatures (Anastakis, 2001, p. 131). These efforts ultimately paid off and the agreement was signed by the national governments in 1965.

In the following decades, rapidly converging production and consumption patterns made necessary the establishment of a new and wide-ranging agreement that would provide to other sectors the same opportunities enjoyed by the automotive industry. Although the administration of Canadian Prime Minister Pierre Trudeau temporarily resisted this trend of economic convergence, adverse economic results led to a rapid change in government position in favour of freer market mechanisms. As a result, instead of opposing economic convergence, the Canadian government decided to foster it through the negotiation of a free trade agreement with the US. The negotiations for such an agreement started in 1986.

The Canada-United States Free Trade Agreement (CUSFTA) was put forward to promote greater cross-border exchanges in various goods and services through the elimination of tariffs and the reduction of numerous non-tariff barriers to trade. Moreover, to address and settle disputes arising from the expected rise in cross-border exchanges, CUSFTA proposed the implementation of a dispute settlement mechanism, made up of binational panels authorised to determine and dispense solutions to disputes (DFATD, 2012). It was expected that this

mechanism would prevent the occurrence of trade disputes that had affected other bilateral and multilateral trade agreements through the application of a reciprocal framework of rules. In the view of Canadian officials, this mechanism was the most important part of the Agreement (Gotlieb, 2013).

The proposal of CUSFTA was well received in the United States, but it encountered significant opposition among Canadian political parties and civil society.<sup>49</sup> As with the Auto Pact, the executive branches of the Canadian and US governments invested significant political capital to secure its passing. The agreement was signed in 1988 and entered into force in 1989.

#### UNITED STATES - MEXICO RELATIONS

Somewhat similar trends to those existing in the US-Canada relations were observable in that of the US and Mexico. At first, the political and economic relations between the two countries were distant and hindered by the historical and ideological differences created by two US interventions in Mexico. Although the implementation of the Good Neighbor Policy in the 1930s improved the diplomatic relations between the two countries, it did not result in increased political understanding or in any significant economic convergence between the US and Mexico.<sup>50</sup> This trend, however, started to change in the 1940s as a result of the economic and social interaction between the two countries in the context of the Second World War, mainly through the implementation of the Bracero Program.

The Bracero Program was an agreement aimed at alleviating the shortage of manual labour in the US caused by the massive enrolment of individuals in the military forces during the Second World War. To fill this gap in the workforce, the program allowed the temporary immigration of Mexican workers to the US. Due to its positive macroeconomic effects for both countries and its political and diplomatic significance to Mexico, the national governments maintained the program well after the end of the war and it was regularly renewed until 1964. Nonetheless,

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<sup>49</sup> It is beyond the scope of this thesis to provide a full outline of the arguments in favour of and against CUSFTA. See Ayres (2008) for a more comprehensive discussion of the episode.

<sup>50</sup> The Good Neighbor Policy prioritised the use of US diplomacy and trade rather than military force in its relations with Latin America as part of its desire to promote and maintain political and economic stability in the Western hemisphere (US Department of State, 2012).

despite these positive effects, the program did not significantly improve the living conditions of Mexican workers. Therefore, after its conclusion, a large number of Mexican workers were confronted with potential or real unemployment and poverty. In 1965, in order to prevent rising unemployment and the lowering of standards of living in the states along the US border, the Mexican government introduced the Border Industrialisation Program, most commonly known as the Maquiladora Program.<sup>51</sup>

At first, the maquiladora program was not as successful as expected. It attracted only a small number of enterprises, created few jobs and generated slow and little economic growth. This situation undermined the economic strategy of import-substituting industrialisation that the Mexican government had been pursuing for about four decades, through which the country attempted to assert its economic independence from the US.<sup>52</sup> By the beginning of the 1980s, the modest results of the maquiladora model and the gradual decline of the ISI model led the Mexican government to reassess and adjust these strategies, as well as its economic and political relations with the United States. Mexico and the US rapidly went from a relationship characterised by a relatively low level of interaction, to one characterised by the integration of their economies through the further liberalisation of the Mexican market and the creation of cross-border production chains. It was in this context that the idea of a closer economic relation with the US through the implementation of a free trade agreement rapidly became popular among the Mexican political elites.

#### CANADA - MEXICO RELATIONS

While it can be said that Canadian and Mexican relations with the US before the 1980s were politically and economically distant, if cordial (albeit to different extents), the same cannot be

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<sup>51</sup> The BIP allowed US companies, mainly assembly-line factories, to establish plants in Mexico to manufacture products for re-export to the United States. The program aimed at attracting foreign investment, reducing the deficit on the balance of payments and, most importantly, creating jobs. The incentives provided to these companies, also known as 'maquiladoras', included little or no taxation on income and capital gains, and no payment of tariffs on imported materials, machinery or equipment. In exchange, the maquiladoras were not allowed to supply the highly protected Mexican domestic market (Grunwald, 1983).

<sup>52</sup> Import-Substituting Industrialisation is an economic policy by which governments, at first, encourage and protect the development of nascent national industries, and then, promote industrial specialisation through the establishment of domestic production facilities to manufacture goods that were formerly imported (Baer, 1972, pp. 95-96).

said about the relationship between Canada and Mexico. Indeed, pre-1990s it is arguable as to whether the two countries were much aware of each other. It was not until 1944, at the height of the Second World War that Canada and Mexico established formal diplomatic relations. In fact, by the start of the 1980s, the diplomatic contacts between the two countries were limited to their joint participation in regional and multilateral agreements and institutions.<sup>53</sup>

It was not until the proposal of a US-Mexico FTA, the subsequent inclusion of Canada in its negotiations and their ensuing transformation into NAFTA negotiations, that the diplomatic and economic relations between Canada and Mexico developed “exponentially” (Government of Canada, 2012). However, despite the occurrence of diplomatic and economic ‘catch-up’ between the two countries, their bilateral relations have never been as wide-ranging as their individual relations with the United States.

### 5.3. THE PROPOSAL AND INTERGOVERNMENTAL NEGOTIATIONS OF THE NORTH AMERICAN FREE TRADE AGREEMENT

As outlined above, before the 1980s, diplomatic and economic relations between the US, Canada, and Mexico were relatively weak. Both Mexico and Canada had, at different times, attempted to reduce their dependence on the US market and capitals by either diversifying their foreign trade or partially closing their domestic market to US firms. At the same time, neither Mexico nor Canada had developed any significant diplomatic or trade relations with each other. Furthermore, none of these nation-states ever indicated any interest in building regional institutions, almost certainly out of concern that such development might constrain their national sovereignty.

By the start of the 1980s, however, diplomatic and economic relations between the US and its neighbours had undergone a substantial change, largely as a result of the convergence between their industries, markets and chains of productions. In less than two decades, the stance of Canada and Mexico had progressively shifted from reluctant neighbours to acquiescent trade

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<sup>53</sup> By the end of the 1980s, Mexico and Canada had only entered seven bilateral agreements –three of which concerned postal management matters.



partners and afterwards active proponents of a much broader and more formal economic integration with the United States. It was in this context that the proposal and negotiation of NAFTA came about. Much like the Auto Pact, CUSFTA and Bracero and Maquiladora programmes, its purpose was to improve and expand economic opportunities for the investors and entrepreneurs in the three countries through the elimination of trade barriers between the US, Canada and Mexico.<sup>54</sup> I further argue that the governments regarded NAFTA as an opportunity to address the unfinished business of previous trade agreements and on-going domestic economic reforms.

Mexico's interest in the proposal and negotiation of NAFTA stemmed from the adverse economic situation that the country was facing at the end of the 1980s. To address it, the government looked to promote investments in the country, through the dismantling of trade controls and the opening of the Mexican domestic market to foreign competitors (Congressional Research Service, 2010, p. 2). Nevertheless, for Mexican President Carlos Salinas de Gortari the most important economic reform was the liberalisation of trade with the United States –the country that held most of its foreign direct investment and accounted for most of its foreign trade. He expected that entering a free trade agreement would strengthen Mexico's economic relations with the US and enhance the country's international standing. In early 1990, President Salinas approached US President George H. W. Bush to discuss the possibility of a US-Mexico trade accord. The proposal was well received and by June 1990, the leaders had committed to negotiate a US-Mexico FTA, which eventually became the basis of NAFTA.

The United States was also interested in the negotiation and implementation of a free trade agreement with Mexico for various reasons. Although it was anticipated that the US would only benefit limitedly from such agreement, its negotiation and implementation was seen as bringing bilateral and multilateral gains (Burfisher, Robinson, and Thierfelder, 2001, p. 126; see also US

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<sup>54</sup> According to its proponents, the implementation of the agreement would result in the creation of the “largest, richest and most productive market in the world” (Bush, 2002, cited in Woodrow Wilson Centre, 2005). In 1990, the three North American countries had a combined Gross Domestic Product (GDP) of between 10.2 and 11.4 trillion US dollars (USD) at 2011 prices and a population of more than 357 million. By way of comparison, in that same year, the then largest and richest integrating market, the European Community (EC), had a combined GDP of between 7.1 and 9.3 trillion USD at 2011 prices and a population of between 331 and 345 million.

International Trade Commission, 1993, cited in Baldwin and Magee, 2000, p. 6). In bilateral terms, the US would benefit, first, from an improved and wider market for its investments and exports. Second, a US-Mexico FTA, and later NAFTA, was seen as likely to contribute to the stabilisation and future consolidation of Mexico's economy. It was expected that the rise in trade resulting from the agreement would result in the creation of high-skilled jobs, an increase in wages, and a reduction of poverty, thus improving overall social conditions in the country and progressively reducing the flow of migrants from Mexico (Congressional Research Service, 2010, p. 1). It was also expected that such economic growth would expand the market for US exports of goods and services. Third, it was anticipated, as the negotiations progressed, that they would eventually expand to include Canada, thus providing an opportunity for the US to revise, expand and build on the provisions of CUSFTA.<sup>55</sup> Meanwhile, in multilateral terms, it was expected that the successful negotiation of a US-Mexico FTA and eventually a NAFTA would invigorate talks on the creation of new and larger free trade areas elsewhere, especially the proposed Free Trade Area of the Americas (FTAA).<sup>56</sup>

Finally, Canada's interest in NAFTA derived substantially from the proposal of the agreement itself. Having engaged in trade agreements with the United States since the 1960s, Canada had progressively opened and secured access to the vast US market for its products and investments. The immediacy of such market made the country heavily dependent on trade with the US. Therefore, when in June 1990, the US and Mexico announced that they were negotiating a FTA, the proposal was perceived as a threat to the close bilateral economic relationship between the US and Canada (Clarkson, 2008, p. 11). In particular, Canada feared that such an agreement would undermine the advantages that it had secured through CUSFTA –namely a competitive position in the US market– and divert bilateral trade towards Mexico. Although it was likely

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<sup>55</sup> The main changes the US sought were the granting of national treatment for foreign investments and the revision of the agreement's dispute settlement mechanism, mainly to allow investors to request a dispute settlement directly and provide for international arbitration in such disputes.

<sup>56</sup> As the negotiation on the FTAA was scheduled to start on December 1994, it was believed that the establishment of a US-Mexico FTA, and later NAFTA, would reinvigorate the negotiations for global trade liberalisation, including the then-stalled Uruguay Round of the GATT. Finally, it was also expected that the introduction of innovative provisions in the US-Mexico FTA and revised CUSFTA, such as the incorporation of provisions on trade-related aspects of intellectual property rights, would become templates for future bilateral and multilateral trade agreements between the US and other countries.

that any diversion would not be significant in terms of volume, the impact would be heavily concentrated in a few sectors that relied on the competitive advantages afforded by CUSFTA. Then, despite its initial hesitancy about taking part in the US-Mexico deal, in December 1990 Canada sought admission to the negotiations in order to reduce any possible losses resulting from the implementation of the US-Mexico FTA. In February 1991, Canada joined the negotiations on a dual-bilateral basis and by June 1991, the negotiations became officially trilateral.<sup>57</sup>

#### 5.4. THE PASSING OF THE NORTH AMERICAN FREE TRADE AGREEMENT

As with earlier agreements and programmes, the proposal and negotiation of NAFTA encountered opposition from a number of domestic social and political groups in each of the three countries. However, the amount of attention and the number of debates that NAFTA provoked differed significantly from those that surrounded previous agreements in two ways. First, the issue of most concern for the general public was not the agreement per se, but the perceived resulting from the inclusion of Mexico as a less industrialised country in an FTA with the US and Canada. Second, if left unaddressed, these concerns would have certainly blocked the legislative passage of NAFTA in each country.

While there was similar domestic opposition to free trade in all the three countries, there were two sides to it. On one side, there were a number of trade unions, non-governmental organisations and politicians in the US and Canada who argued that entering an FTA with Mexico would result in a ‘race to the bottom’ in working and living standards in North America. According to these groups, NAFTA would prompt US and Canadian firms to relocate to Mexico, which would lead to US and Canadian governments and firms to lower labour and environmental standards in a bid to attract (or retain) jobs and investments. These groups also maintained that due to increased foreign investment and expected growth in trade, Mexico would likely neglect the enforcement of environmental and labour laws and regulations, which

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<sup>57</sup> An analysis of the negotiations of NAFTA and its side agreements is beyond the scope of this thesis and can indeed be found in Hufbauer and Schott (1993; 2005) and Cameron and Tomlin (2000). For an analysis of the negotiation of the NAALC, see Knox and Markell (2003).

would in turn adversely affect the protection of environmental standards and labour rights throughout the rest of North America. In the other camp, non-governmental organisations in Mexico, as well as some in the US, argued that NAFTA would force entire industrial sectors in Mexico into closure, due to their lack of competitiveness vis-à-vis their US and Canadian counterparts. This would in turn result in the loss of jobs and the lowering of living conditions for workers. Furthermore, these groups believed that given the decades-long tariff-based protectionism of the Mexican market, most companies in the country would be unable to secure the investment funds necessary to modernise their operations and integrate with the expanded markets of NAFTA (Hellman, 1993, p. 205).

As both sides continued to oppose the agreement, the level of domestic approval for NAFTA in the three countries decreased, most visibly in the US (see table 1). After less than two years of trilateral negotiations, it became evident that the passing of the agreement would be difficult if these concerns were not addressed, especially in the US and Canada. As I explain below, the national governments played a key role in resolving these concerns in their individual domestic negotiations.

TABLE 1.			
PUBLIC SUPPORT FOR NAFTA (1991-1993) <sup>58</sup>			
	1991	1992	1993
<b>Canada</b>	39%	40%	37%
<b>Mexico</b>	80%	70%	73%
<b>United States</b>	70%	55%	41%

<sup>58</sup> Calculated with information from MORI de México, 1993, cited in Davis, 1998, 117; *Prospectiva Estratégica*, 1991, cited in Davis, 1998, 117; Yelton, 1993, 17,20; Decima and Goldfarb, 1991, cited in Mendelsohn and Wolfe, 2001, 245; MORI de México, 1992, cited in Morris and Passé-Smith, 2001, 137; Saad and Gallup and Moore, cited in Morris and Passé-Smith, 2001, 133.

## THE PASSING OF THE AGREEMENT IN MEXICO

One of the main reasons for which civil society groups and non-governmental organisations in Mexico opposed NAFTA centred on the conditions under which the country had entered the negotiations. Despite being a developing country, Mexico had waived special and differentiated treatment in the negotiation and implementation of NAFTA, thus agreeing to undergo the economic and social adjustment that the agreement would bring about without the aid of an effective ‘social safety net’ to ease the transition.<sup>59</sup> Other groups also opposed NAFTA out of concern that its implementation would be accompanied by drastic and detrimental policy changes similar to those that had accompanied Mexico’s joining of GATT. Finally, most of the general population did not believe that any of these issues would be addressed in the talks, due to Mexico’s –and to some extent, Canada’s– complacent stance in the face of US control of the NAFTA negotiations (see Hellman, 1993; Cameron and Tomlin, 2000).

To overcome this opposition the Mexican government adopted a two-fold strategy. First, it secured the support of the major labour unions and business organisations for the agreement by providing key incentives.<sup>60</sup> Second, it promoted the positive impact of increased trade and foreign investment resulting from the agreement, including the expected rise in living standards, among the Mexican population –and especially its less well-off segments. This included setting up development programmes aimed at gaining support for, or at least acquiescence towards, the government’s economic liberalisation policies, including the passing of NAFTA (Poitras and Robinson, 1994, p. 11). These efforts gained enough support for the agreement from the labour unions, business organisations and the public to secure its passing in the Mexican Senate. In December 1993, President Salinas signed NAFTA into law.

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<sup>59</sup> Special and Differentiated Treatment refers to the establishment of preferential trade provisions for developing and least developed countries “whose cost of implementation at that specific stage is too high [for the country] or whose cost to the world trade system of non-implementation is trivial” and can be thus temporarily forgone (International Institute for Sustainable Development, 2003, p. 1)

<sup>60</sup> These included financial concessions, participation in the setting of Mexico’s position in NAFTA negotiations and, in the case of the most influential and powerful ones, the setting of Mexico’s national objectives in the negotiations.

In 1993, negotiations on the main text of NAFTA had already concluded and President Bush had formally signed the agreement. However, the incoming administration of President Clinton considered that it was necessary to strengthen public support for the agreement and to counter the opposition to it, before submitting it to the US Congress for ratification, in order to avoid the risk of it not being sanctioned. To do this, the Executive also adopted a two-step strategy: disentangling the domestic opposition in differentiated subject-issue sectors, followed by the securement of fast-track authority to pass NAFTA.<sup>61</sup> The national government judged that, while some groups, firms and individuals were opposed to NAFTA altogether, others would support it on condition that their concerns over labour, environment and social welfare were addressed in the agreement or through a parallel domestic or regional institutional mechanism. The Clinton administration took the decision to leave the welfare concerns to one side, and instead focus on addressing labour and environment issues. Notably, the administration proposed to establish two independent supranational commissions in North America, tasked with upholding and enforcing each country's domestic laws on these matters. However, the Canadian and Mexican governments rejected the proposal arguing that it transgressed their sovereignty.<sup>62</sup>

In light of this response, the Clinton administration reassessed its proposal, and proposed again the creation of regional institutions on labour and environmental issues, but this time with much weaker overseeing and enforcement powers. Canada and Mexico agreed to these weaker institutions and signed two side agreements to the main text of NAFTA for the enhancement of environmental and labour cooperation in North America. While the provisions of these side

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<sup>61</sup> In trade negotiations, fast-track authority is the ability of the US President to submit agreements to Congress for an up-or-down vote without amendments (Baldwin and Magee, 2000, p. 1).

<sup>62</sup> Some accounts overemphasise the analysis of the national interests of the US in detriment of Canadian and Mexican ones. In fact, the US was also heavily constrained by the national interests of the other states. For instance, some groups in the US demanded legally binding rules on environmental protection and labour rights as a condition for the ratification of NAFTA. Although the Clinton administration aimed to deliver such rules, it was aware of Mexico's sensitivity to interference in its internal affairs, especially on labour issues, and thus did not push for such rules on the labour policy arena (Abbott and Snidal, 2000, p. 454; Shoch, 2000, p. 123). For this reason, the US negotiators proposed the establishment of weaker rules on labour issues than on environmental ones. This decision to weaken the labour agreement is the basis of the differences between the current CEC and CLC.

agreements did not address the concerns of all its opponents, their introduction gained the necessary support to secure the passing of NAFTA in the US Congress. As a result, on November 1993, the House of Representatives passed the agreement and, in the same month, the Senate ratified it.

#### THE PASSING OF THE AGREEMENT IN CANADA

The debate around NAFTA in Canada was in many ways a continuation of the one which had emerged around CUSFTA in the 1980s. Indeed, the opposition to NAFTA echoed the objectives, structure and partisanship of the coalition which had opposed CUSFTA and its concerns mirrored those existing in the US and Mexico. However, the wide-ranging set of objectives and interests that characterised the Canadian opposition, prevented it from producing a consolidated set of demands to policymakers and thus influencing the outcome of NAFTA negotiations.

It was in this context that the national government sought ways to maintain the country's privileged position in CUSFTA. Prime Minister Brian Mulroney set out his plan for Canada to join to the US-Mexico FTA negotiations and turn the proposed agreement into NAFTA to the country's most important policymakers and business organisations. The proposal enjoyed broad support among these groups, but not amongst voters. However, the pending US presidential elections of 1992, the Canadian federal elections in 1993 and the Mexican presidential election of 1994 prevented Canadian policymakers and negotiators from having sufficient time to develop other bargaining solutions to NAFTA and hampered public discussion of the alternatives. Although Canada was able to conclude the negotiation of NAFTA within this limited timeframe, the federal government failed to secure broad popular support for its liberalising agenda, resulting in the fall of the incumbent party. In June 1993, the Canadian Senate ratified the agreement. The incoming administration of Prime Minister Chrétien closed the debate on NAFTA by refusing to renegotiate the agreement just as he had promised in his campaign (Bradsher, 1993; Hunt, 1994, p. 18; Finbow, 2006, p. 53).

Finally, with the agreement signed into law by the executive branches of all three governments, and ratified by their correspondent legislatures, NAFTA came into force in January 1994.

#### 5.4.1. THE NORTH AMERICAN AGREEMENTS AS INTERGOVERNMENTAL BARGAINS

The previous sections have served to illustrate that one of the most important characteristics of the bilateral and trilateral agreements and programmes implemented in North America up to the 1990s was their intergovernmental nature –in other words, that the nation-states are the main actors and national governments are the ultimate decision-makers. I argue that the conception of these agreements and programmes were the primary result of the proposals and actions of, and consensus on the part of the national governments of the US, Canada and Mexico, and especially their heads of state. Their actions resulted in the creation, expansion and enhancement of rules for cross-border exchanges and the flows of goods, capitals and (occasionally) people. And while their interests, positions and objectives differed significantly, the eventual ratification of these agreements was the result of their joint efforts to reach them. In this way, the action of other actors in support of or opposition to the agreements is incidental.

To reach the agreements, national governments, first, initiated the negotiations; then, secured gains, compromises and concessions from each other. Then, they sought to overcome the opposition from domestic actors to these agreements –which at times included that of sub-national governments and civil society organisations. Finally, they secured the passage of the agreements in their individual legislatures. Moreover, it can be held that the interests of the national governments in reaching these agreements took precedence over the demands and interests of particular domestic sectors (O'Brien, 1995, p. 713). For these reasons, I argue that the agreements entered into by Canada, Mexico and the US between the 1940s/1960s and the 1990s were intergovernmental bargains.



#### 5.4.2. COMPARING TRANSACTION-BASED AND GEOPOLITICAL-CENTRED EXPLANATIONS FOR THE OCCURRENCE (OR LACK THEREOF) OF REGIONAL INTEGRATION IN NORTH AMERICA

Once I have established that the North American agreements (i.e. NAFTA, NAAEC, NAALC and BECA) can be seen as intergovernmental bargains, and thus that the entering of agreements (and the establishment of common rules) is key to understanding the occurrence of regional integration, I will address the question of whether other types of theories can account for the occurrence (or lack thereof) of integration overall. That is, I will explore the question of whether theories not centred on the occurrence of economic transactions can provide a better explanation for regional integration than transaction-based theories such as Liberal Intergovernmentalism and Supranational Governance. Moreover, I will briefly discuss whether geopolitical and ideological concerns can substantially explain the occurrence (or lack thereof) of regional integration.

On the first issue, it is important to remember that both Liberal Intergovernmentalism and Supranational Governance aim to explain the occurrence and development of the phenomenon of regional integration. These theories provide different explanations to account for the decisions and actions of governmental and supranational actors in pursuing and promoting integration. Yet, both theories agree that the main rationale for countries pursuing and promoting integration is that of reaping the benefits of increased cross-border transactions. In this sense, both theories are transaction-centred theories.

Following this line of reasoning, on the question of whether geopolitical and ideological concerns can substantially explain the occurrence (or lack thereof) of regional integration, neither Liberal Intergovernmentalism nor Supranational Governance regards previous military conflicts or peace treaties as sources of integration, and therefore they argue that the ideological or diplomatic tensions that may arise from such conflicts do not explain *satisfactorily* the occurrence and development of regional integration (or lack thereof) amongst them. In the view

of Supranational Governance or Liberal Intergovernmentalist theories, accounts of (European) integration, which emphasised its nature as a phenomenon that engenders peace (or contributes to resolve historic confrontations), do not sufficiently explain why the process of regional integration occurs or develops (or not). Although Liberal Intergovernmentalist and Supranational Governance scholars disagree on various issues, they do agree that theoretical accounts which argue that integration results from diplomatic efforts to prevent war or to promote peace (such as those of Haas, (1961), are partial and cannot explain developments seen in integrating regions, such as Europe.

For instance, Moravcsik argues that:

most interpretations of national preferences for and against European integration emphasise geopolitical interest or ideology [as the grounds for setting such preferences. In this view,] positions vary by country as a function of ideological commitment [...] or perceived politico-military threat. [...] Shifts in preferences and policies follow the onset and precede the resolution of major geopolitical events. [such as wars or major diplomatic disagreements] Major cleavages reflect divergent threat assessments or fundamental ideological beliefs (e.g. nationalist vs. internationalist) (1998, p. 35)

Moravcsik goes on to argue that, however, a “geopolitical theory of national preferences [can only explain] the indirect consequences of economic integration” (1998, p. 35), but cannot account for the *main direct* sources of integration. In other words, a geopolitical theory of national preferences can only explain what would the geopolitical/security effects of regional integration be for a given country or set of countries, e.g. promoting peace amongst them, but could not explain why such countries agree to pool political decision-making into common or regional institutions, least can it explain the variations across different policy arenas. He argues that, for instance, in the various negotiations of major treaties in the EEC/EC/EU, “preferences generally varied across issues and countries, as political economy theory predicts, rather than

simply across countries, as geopolitical theory lead us to expect” (1998, p. 474). According to Moravcsik, given that geopolitical-based or ideological-centred theories cannot adequately explain the rationale for pursuing economic, least political, integration among countries, it is necessary to look elsewhere for factors explaining why countries decide and agree to coordinate their policies in a range of policy areas (or arenas, as called in this thesis).

Along the same lines, Stone Sweet and Sandholtz argue that rising economic exchanges “constitute the only important causal factor that [...] provokes integration” (1997, p. 7). For these authors, the actions of “societal actors engaged in cross-border communications and exchange [–what I call transnational actors in this thesis–] are the motor driving integration” (Sandholtz, 1998, p. 136). Their actions generate demand and pressure for putting into place common rules and policy coordination, as their absence inhibits cross-border exchanges due to the unpredictable and onerous task of dealing with different sets of rules. However, “state actors have their own interests; two fundamental ones are to maximise their own autonomy and to maximise the generation of wealth within their territory. In defence of their autonomy, states will frequently resist the shift toward [regional] policymaking” (Sandholtz, 1998, p. 136). In this respect, one can indeed argue that states might resist or oppose this mode of governance on ideological grounds, say, stemming from diplomatic disagreements based on previous conflicts or nationalistic concerns. Yet, “as they do so, they inhibit the generation of wealth within their territories by those actors that depend on [cross-border] transactions. Since political leaders must generate prosperity to satisfy their constituencies, blocking integration for more than the short run is unsustainable” and politically costly (Sandholtz, 1998, p. 136).

To exemplify this argument, a theoretical account of integration based on an analysis of ideological commitments or diplomatic disagreements would fail to explain why the Canadian government abandoned its Third Option policy pursued between 1972 and 1986, in favour of further integration with the United States through the negotiation of CUSFTA, under the Mulroney administration. Although the administration of Prime Minister Trudeau temporarily resisted this trend of economic convergence between 1972 and 1986 through its ‘Third Option’

policy, in light of adverse economic results, the government rapidly abandoned it in favour of freer market mechanisms. Therefore, instead of opposing this economic convergence, the Canadian government decided to foster it through the negotiation of a free trade agreement with the United States. Even though the Trudeau administration was strongly committed to reducing the economic dependence of Canada to the United States, and thus increasing its perceived political sovereignty, such commitments and ideologies eventually yielded to the economic incentive of reaping the gains of increased and expanded cross-border trade and investment.

Similarly, an explanation of integration based on ideological commitments or diplomatic disagreements would fail to explain why the Salinas administration decided to negotiate a free trade agreement with the United States. Indeed, as Cameron and Tomlin argue, the idea of liberalising bilateral trade with its northern neighbour was “something that went against the grain of Mexico’s history and revolutionary traditions” (2000, p. 3). Economic nationalism, including protection of the domestic market, had been historically construed as part of Mexico’s identity or even as a security issue inasmuch it purportedly reaffirmed its independence and sovereignty.

Yet, as previously explained in this chapter, by the beginning of the 1980s, the modest results of the *maquiladora* model and the gradual decline of the import substitution model lead led the Mexican government to reassess and adjust these strategies, as well as its economic and political relations with the United States.<sup>63</sup> Therefore, as Supranational Governance and Liberal Intergovernmentalist scholars would argue, economic incentives trumped nationalistic ideological commitments or diplomatic disagreements. As Hamnett asserts, the establishment of NAFTA and other reforms conducted by the Salinas administration, which “were designed to remove the barriers preventing the economy from becoming more efficient and competitive [and

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<sup>63</sup> In regard to this point, it is important to remember that at the end of the 1980s, Mexico was facing an adverse economic situation. “Since the start of the decade, national GDP growth rates had been decreasing, productivity had stagnated and balance of payments crises had become recurrent” (Máttar, Moreno Brid and Peres, 2002, p. 9). The country was affected by recession, inflation and debt and in urgent need of foreign capital. To promote investments in the country, the government had begun to reverse its protectionist economic stance which had been in place since the mid-1980s. It progressively dismantled trade controls, opened the Mexican domestic market to foreign competitors and restructured the industrial apparatus through the privatisation of numerous state-owned enterprises (Congressional Research Service, 2010, p. 2).

link the Mexican economy to the US, were] radical departures from traditional economic nationalist policies” (pp. 274-275). However, the urgent need for Mexico to promote trade with, and secure investment from, the US –in order to reap economic gains– trumped the ideological and geopolitical concerns that the country might have had against pursuing and promoting integration with its northern neighbour. In conclusion, as Liberal Intergovernmentalism and Supranational Governance scholars would argue, geopolitical explanations for the occurrence of integration (or lack thereof) failed to explain these developments.

In sum, an explanation of national preferences based on ideological commitments of, or diplomatic disagreements between, national governments, would inadequately and insufficiently explain many policy outcomes that North America –just as Europe– has witnessed over the past decades.<sup>64</sup> Therefore, I have opted to focus on the more coherent and persuasive theories that account for the occurrence and progression of regional integration, including the institutional development (or lack thereof) of the institutions established by the NAFTA and its side agreements. Therefore, this thesis starting point is the proposal and negotiation of the North American Free Trade Agreement.<sup>65</sup>

#### 5.4.3. CONCLUSION

In this chapter, I have outlined the foundations of North American integration, demonstrating that before NAFTA there were indeed bilateral relations between the North American countries and that these relations had resulted in the implementation of a number of bilateral economic agreements. However, I have also shown that these agreements did not necessarily create close economic or diplomatic relations, and certainly not close political relations between these countries. On the contrary, at different times, both Canada and Mexico had sought to assert their economic and political independence from the United States. As such, I argue that before

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<sup>64</sup> Including the US invasion of Mexico, which took place between 1846 and 1848, the diplomatic tensions between Mexico and the United States in the mid-1980s or those between Canada and the United States in the 1970s.

<sup>65</sup> Stone Sweet and Sandholtz make a similar argument when they state that their work “do[es] not explain the founding of the EC, but rather its institutional development. Our starting point, therefore, is the Treaty of Rome” (1998, p. 2).

NAFTA, there was no significant interdependence between the three countries in any policy arena.

I have established that the agreements entered between the North American countries, including NAFTA itself, are intergovernmental bargains. That is, they resulted from a series of negotiations, compromises and concessions between the national governments of Canada, Mexico and the US aimed at creating, expanding and enhancing rules for cross-border exchanges and the flow of goods, capitals and, (occasionally) people. In these negotiations, each national government pursued its own interests. At all times, their positions and objectives prevailed over those of other actors. For these reasons, I argue that national governments were the most important actors in the negotiations that preceded and led up to NAFTA and its side agreements in 1994. Finally, I have aimed at contesting possible objections to the use and focus on transaction-based theories rather than other accounts centred on the analysis of ideological or geopolitical concerns for the explanation of the occurrence and development (or lack thereof) of regional integration.

CHAPTER 6:

CASE STUDY: THE COMMON

POLICY ARENA ON

ENVIRONMENTAL

PROTECTION

## 6. CASE STUDY: THE COMMON POLICY ARENA ON ENVIRONMENTAL PROTECTION

### 6.1. INTRODUCTION

The main objective of this chapter is to advance three arguments: first, the national governments of Canada, Mexico and the US created a common policy arena on environmental protection in North America through the implementation of the North American Agreement on Environmental Cooperation (NAAEC). Second, transnational actors expanded this arena through the use, application, interpretation and demand for modification of the provisions of NAAEC. Third, the Commission for Environmental Cooperation (CEC), the North American Development Bank and the Border Environment Cooperation Commission consolidated this arena through the supply of new and improved transnational rules on the protection and enhancement of the North American environment. To analyse the occurrence and development of integration in this arena, I use the theories of Liberal Intergovernmentalism and Supranational Governance.

To advance these arguments, I first describe the limited cooperation between the North American countries in environmental issues prior to the 1990s. I show how cooperation mechanisms in place at the time were solely dedicated to the international allocation of natural resources and the mitigation of pollution affecting border areas, and discuss the exposure of these initiatives to changes in national administrations. I further argue that the treatment of environmental matters in North America before the implementation of NAFTA and NAAEC reflected the non-existence of a common policy arena on these issues.

Second, I assess the creation of a common policy arena in environmental issues. I argue that the emergence of this arena constituted the basis of policy interdependence between the three countries on environmental issues. I argue that the arena emerged as a result of the interests of the nation-states, specifically their national governments, in securing the NAFTA. In this respect, I argue that Liberal Intergovernmentalism adequately explains the entering of the



NAAEC and the creation of the CEC. It was at this stage that regional organisations were put in place to deal with existing cross-border environmental problems and prevent further ones from developing. Yet, once the national governments established the arena through intergovernmental bargaining, the actions of transnational actors have changed the nature of the arena and the behaviour of nation-states.

Thirdly, I explain that transnational actors have demanded more and better regional rules on environmental protection in order to address policy externalities resulting from increased cross-border exchanges between the three countries and to enhance the region's environment. Through their use, application and interpretation, they have expanded the arena in ways that the national governments had not foreseen in the original bargain.

Finally, I argue that regional institutions have consolidated the common policy arena delivering improved and better rules. The actions of transnational actors and regional institutions have thus expanded and consolidated the arena. Because of their actions, the rules and the institutional structure for addressing regional environmental issues is more complex than it was when the national governments created the arena. Therefore, I conclude that Supranational Governance more adequately explains the shift observable in these two stages and thus, I draw on insights from this theory to explain the institutionalisation of the arena.

## 6.2. BACKGROUND: ENVIRONMENTAL COOPERATION IN NORTH

### AMERICA BEFORE NAFTA AND NAAEC

Cooperation between Canada, Mexico and the US on environmental issues was very limited before the implementation of NAFTA and NAAEC. Although consultation between the three countries on environment-related matters dated back to the early twentieth century, a distinct environmental policy arena did not exist in North America prior to the entering of these agreements in the 1990s.

At first, intergovernmental engagements between the three countries on the protection of the environment were limited in both scope and incidence. Bilateral consultations on these matters were circumscribed to the national distribution of water bodies located along the US-Canada and US-Mexico borders and, for the most part, they took place within the framework of international forums, such as international irrigation congresses (Lee, 1966, p. 273). In addition, such consultative mechanisms failed at preventing, identifying and resolving cross-border environmental problems, because their action was commonly subordinated to the accomplishment of wider foreign policy objectives of the national governments, especially the maintenance of harmonious bilateral relations (Carroll and Mack, 1982; Bennett and Herzog, 2000; US Department of State, 2011). Later, when the North American governments began to engage in consultations on environmental issues, they did so in high-level bilateral fora aimed at addressing and resolving specific cross-border pollution problems, mainly those related to industrial development and population growth. This structure made consultations bureaucratically demanding, yet infrequent and ineffective.<sup>66</sup>

Finally, prior to the 1990s, when the governments of the US, Canada and Mexico cooperated on environmental issues, they did so through separate bilateral relations. Some government officials in the three countries had already called for the treatment of these issues in a trilateral manner.<sup>67</sup> In their view, the countries faced problems of a similar nature, which could be addressed through the operation of a single regional institution managing programs with similar objectives in the two common border areas. Yet, the national governments disregarded the proposal and consistently implemented separate international agreements and organisations for each cross-border area, which resulted in duplicated efforts and divided resources for the

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<sup>66</sup> For instance, setting them up required extensive exchanges of diplomatic notes among the national governments, which in turn took considerable time to consult domestically with other levels of government, before implementing any proposed solutions. Progress on the consultation and solution of environment-related issues was also commonly conditioned to progress on another, at times unrelated, bilateral issue thus preventing a prompt response to growing environmental problems (Carroll and Mack, 1982, p. 41).

<sup>67</sup> Long before the establishment of a regional institution charged with the protection of the environment in North America, non-federal policymakers of the three countries had already recommended the appointment of an international commission to manage water bodies of an 'international character' along the US, Mexico and Canada borders (IJC, 2013). Canada introduced such proposal at the International Irrigation Congresses of 1894 and 1895, and although the proposal was adopted unanimously by the three countries, such trilateral international commission was never established.

institutions, and constrained their capacities to protect the environment. This practice of establishing similar-but-separate consultative mechanisms remained, however, until the beginning of the 1990s. In the following section I briefly review the mechanisms existing in the two bilateral contexts and comment on the hindrances to cooperation that they engendered.

#### 6.2.1. US - MEXICO RELATIONS

The increased interrelatedness of the US and Mexican economies brought along a continued population growth and increased industrial activity in their common border area, and by corollary, there was greater recognition by their governments of the implications of environmental problems. Gradually, the US and Mexico moved from bilateral consultation to cooperation on environmental issues, shifting from intermittent consultation through diplomatic channels on the allocation and preservation of natural resources to stable bilateral cooperation to protect and enhance the environment. Yet, as late as the 1980s, such cooperation remained limited (Mumme, 1985; Bennett and Herzog, 2000). To illustrate this, I briefly review the environment-related institutions and mechanisms that existed before the entering of NAAEC and discuss their limitations to address the environmental problems facing the two countries.

##### INTERNATIONAL BOUNDARY AND WATER COMMISSION

The International Boundary and Water Commission (IBWC) was the first environmental institution in the context of US-Mexico relations. Its creation in 1944 was an attempt by the US and Mexican governments to address issues relating to the allocation, use and preservation of the water bodies along their shared border in a more expeditious way than that afforded by traditional diplomatic channels of its predecessor, the International Boundary Commission (IBC).<sup>68</sup> Given that, originally, the IBWC would advise governments on issues that could be politically and diplomatically contentious, both countries wanted to prevent the institution from taking a proactive stance in favour of either of them (Ingram and White, 1993, p. 155).

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<sup>68</sup> The IBC was an organisation mainly charged with surveying and marking the US-Mexico border. Yet, since its creation, it had been accumulating a record of intergovernmental cooperation on the allocation of use and distribution of waters in the border area and joint construction, operation and maintenance of water facilities (IBWC, 2013).

Therefore, the governments emphasised the IBWC's technical and consultative status and its nature as a technical and engineer-oriented organisation.

Such emphasis, however, constrained the capacity of the IBWC to promote the sustainable use of border water resources or deal with emerging environmental problems related to their preservation and quality. For instance, the institution was prevented from identifying emerging environmental problems, prioritising such problems, or creating consultative bodies to advise either government on these issues (Belausteguigoitia and Guadarrama, 1997, p. 107). Even in urgent cases, the final decisions on major joint actions still rested on the US and Mexican foreign affairs secretariats, thus making action by the institution tardy and lengthy (Sánchez Rodríguez, 1993, p. 284). These constraints thus limited the capacities of the IBWC, making its actions remedial and ad hoc rather than preventive and comprehensive. Over time, they made the institution growingly incapable of solving cross-border water-related issues.

#### US - MEXICO CONSULTING MECHANISM

In 1977, the US and Mexico expressed their mutual interest in developing a closer relation and increasing bilateral consultation in various policy arenas, including border issues. In respect to border cooperation, the national governments considered that the most pressing issue was the slowness and limited success of the IBWC in addressing pollution and other environmental concerns. On this basis, the countries established the US-Mexico Consulting Mechanism. Under the Mechanism, the US Environmental Protection Agency (EPA) and the Mexican Secretariat of the Environment (SMA) adopted a more informal approach to bilateral cooperation on transboundary environmental protection than that afforded by the IBWC.<sup>69</sup>

The adoption of this informal approach resulted in increased and strengthened cooperation during the two years of operation of the Mechanism. However, in 1979, changes in the US administration led to the disbanding and reorganisation of the Mechanism into the US-Mexico Binational Commission. With its discontinuation, as of late 1970s, bilateral consultation and

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<sup>69</sup> For instance, cooperation initiatives were no longer mediated by the foreign affairs secretariats, nor were they expressed in formal, binding agreements such as Minutes. Instead, the governments opted for the subscription of Memoranda of Understanding (a non-binding diplomatic commitment) when necessary.

joint action on environment-related issues returned to an ad hoc and contingent approach subject to changes in national administrations.

#### LA PAZ AGREEMENT

The La Paz Agreement (LPA) is probably the most important bilateral accord on cooperation for the protection of the environment in the US-Mexico border area. Signed in 1983, it aimed at addressing existing pollution problems affecting the border area and reducing the possible negative impact of the on-going industrialisation of Mexico. It promoted increased coordination and cooperation between US and Mexican environmental agencies and determined specific national responsibilities and binational responses to future and potential environmental problems. In contrast to previous mechanisms, the LPA allowed federal agencies of the two countries to identify important and emerging environmental issues and create the consultative bodies needed to deal with them (Belausteguigoitia and Guadarrama, 1997, p. 108). By setting these rules, the agreement also became the basis for US-Mexico cooperation in border environmental issues, as subsequent agreements came to rely on its definitions and framework.

Despite these significant advancements, the LPA did not create a common policy arena on environmental issues. I argue this based on two facts. First, the provisions of the LPA were still embedded within these countries' own national laws, which were to be carried out through existing binational institutions, such as the IBWC or the recently created US-Mexico Binational Commission (US Department of State, 2013). Therefore, the LPA did not create *cross-border* rules or established a *regional* institution. Second, the LPA only complemented commitments already made by the national governments and clarified the provisions of previous agreements and the functions of the only bilateral institution already in place, the IBWC. Therefore, I argue that the LPA was intended to enhance cooperation on environmental matters, but within a framework that favoured the respect of national sovereignty over the resolution of cross-border issues. In sum, the LPA contributed to progress towards the creation of a common policy arena on environmental issues, but did not create one.

### 6.2.2. US - CANADA RELATIONS

As commonly noted, Canada and the US have one of the oldest and most effective partnerships for environmental protection in the world (US EPA, 2012; see also Hall, 2009). Yet, as of the 1970s, consultation and resolution of common environmental issues still consisted almost exclusively of the prevention and settlement of diplomatic disputes regarding the current and future uses of water bodies along the common border. It was until the 1980s and 1990s that the two countries gradually shifted such status quo towards greater bilateral cooperation. A review of the institutions that constituted this framework highlights this change.

#### INTERNATIONAL JOINT COMMISSION (IJC)

The IJC is an *international* institution, independent of the US and Canadian national governments, charged with two main responsibilities: to regulate the use of water bodies along the US-Canada border and to investigate environment-related issues affecting these water bodies and find and recommend solutions to them (IJC, 2013).<sup>70</sup> As originally established, the IJC *had* ample powers to fulfil its responsibilities that just fell short of a supranational character, even if in most cases it required the explicit request of national governments to exercise them.

Over time, the IJC has undergone various changes and so its international character is now more nominal than substantive.<sup>71</sup> For the purposes of this thesis, the most important of these changes was that related to the IJC's adjudicating capacity. This is, in the event that the interests of Canada and the US over the use of water bodies collide, the IJC may be called upon to arbitrate the conflict and generate a binding decision. This is an important provision, since it gives the IJC an adjudicative, quasi-judicial function (Parrish, 2006, p. 10). However, as of late 2013, the IJC has never been called upon to arbitrate an issue. On the contrary, as I explain in the next pages, its capacities have been progressively curtailed by the national governments.

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<sup>70</sup> In the context of US-Canada relations, two separate institutions manage the treaties concerning shared border issues: the International Boundary Commission (IBC) and the International Joint Commission (IJC). Both act to settle differences that arise in the application of the treaties relating to border issues. However, the IBC is only concerned with marking and maintaining the boundary between the two countries. It accomplishes this very limited mandate with an equally limited budget and authority. Therefore, this institution is not further analysed or discussed here.

<sup>71</sup> For instance, to this day, the IJC investigates, monitors and recommends actions on issues regarding the US-Canada border environment. However, its recommendations –known as reference recommendations– are non-binding, even if they are usually accepted and implemented by governments (IJC, 2013).

The consensus among scholars is that the IJC has contributed to the management and preservation of the border water resources and their related environments (see Hall, 2009; Schornack and Nevin, 2006; Flaherty, Pacheco Vega, and Isaac-Renton, 2011). Yet, scholars also agree that, the IJC's role and capacity have been progressively circumscribed by the US and Canadian national governments, out of concern that its actions might impinge on their sovereignty. As Parrish asserts, the harder the IJC has tried to address and solve environmental problems, the more its capacities have been curtailed by Canada and the US, to the point that the current role of IJC is merely cautioning the national governments about threats to transboundary water bodies and its related environments (2006, p. 15).

#### THE GREAT LAKES WATER QUALITY AGREEMENT (GLWQA)

Compared to aforementioned agreements, which were disconnected from one another, the actions and objectives of the International Joint Commission, the Great Lakes Water Quality Agreement, and the Binational Executive Commission, which I discuss later in this section, are intertwined. To understand their relation it is necessary, first, to understand the content of the GLWQA.

Prior to 1987, the IJC had a significant amount of autonomy and power vis-à-vis the national governments in the management of water-related environmental issues in the Great Lakes area. However, to cope more effectively with the existing and emerging problems affecting the Great Lakes, the two countries implemented the GLWQA in 1972, which underwent significant amendments in subsequent years. The most important of these, the 1987 Protocol, revised and restructured the institutional framework under which the GLWQA operated, and determined that from then onwards, most of the IJC's responsibilities would be implemented as coordinated domestic programmes, rather than as programmes of such institution. The Protocol thus divested IJC's of its powers, and created a forum, the Binational Executive Committee (BEC), that was charged with managing the GLWQA.

This change in the framework was substantive.<sup>72</sup> The IJC was originally established as an international institution, not dependent on the US and Canadian governments, and given certain conditions, even able to resolve international disputes through quasi-supranational ruling. In contrast, the Binational Executive Committee is under direct control of the national governments and not capable of implementing, managing or implementing any programs of its own. This shift thus curtailed the freedom of action, power and influence of the IJC over environmental matters in general, and the management of issues concerning the Great Lakes, in particular. Just as in the US-Mexico context, the reason for this change was the concern over the loss of state sovereignty on policy decisions (see Parrish, 2006).

#### THE BINATIONAL EXECUTIVE COMMITTEE (BEC)

The BEC is an intergovernmental policy forum created under the provisions of the 1987 Protocol, which amended the GLWQA and revised the responsibilities of the IJC. Its purpose is to coordinate binational programs for protection of the Great Lakes basin. However, under the 1987 Protocol, any commitments and joint initiatives undertaken by the BEC are outside the control of the IJC.

Although the Binational Executive Committee is nominally charged with helping to coordinate the implementation of the programmes of the IJC, some observers argue that, instead, the creation and functioning of the BEC has compromised the capacity of the IJC to preserve the environment of the Great Lakes (see Alliance for the Great Lakes et al., 2007; Muldoon, 2012). They argue that the IJC is being deliberately undermined in order to curb its influence and relevance on these issues and thus assert the prominence of national governments and their sovereignty. In their view, the functioning of BEC has enabled the withdrawal of national environmental agencies from the IJC framework and caused a decrease in binational participation on environmental programs (Botts and Muldoon, 2008, p. 1560). I argue that ultimately, the changes to the capacities and responsibilities of the International Joint

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<sup>72</sup> For instance, previously, the IJC had the power to publicly report on matters related to water quality in the Great Lakes as it saw fit. However, after the 1987 review, the national governments agreed to report only to each other at the high-level governmental meetings organised under the framework of a newly created BEC.



Commission and the GLWQA that resulted from the establishment of the Binational Executive Commission did hamper the effectiveness of the former institution to address environmental issues in the US-Canada border.

### 6.2.3. THE NON-EXISTENCE OF A COMMON POLICY ARENA ON ENVIRONMENTAL ISSUES

In light of the facts above, I conclude that before the implementation of NAFTA and NAAEC, the treatment of environmental matters in North America was determined through intergovernmental decision- and policy-making, and more importantly, that a common policy arena on environmental issues did not exist in North America. I argue that, before the negotiation and implementation of the North American agreements, the national governments of Canada, Mexico and the United States were in control of the making and implementation of policies regarding the preservation and protection of their environments. Although the national governments may have acknowledged the interrelatedness of their environments, and especially those along their shared border areas, they favoured the separate management of environmental issues, and thus created an institutional framework that reflected the pre-eminence of national decision and policy-making. Although the governments created binational institutions for each shared border area, these institutions had limited responsibilities and powers to protect and preserve the environment.

In general, this framework failed to address the problems facing the three countries, and especially those affecting their shared border areas. The solutions that the binational institutions proposed were nearly always ad hoc and remedial, and circumscribed in terms of length and scope. What is more, when the institutions proposed to expand their own responsibilities and powers to meet their mandated functions satisfactorily, the national governments perceived this proactive stance as a threat to their sovereignty. Rather than delivering these changes, the governments often responded by restructuring these institutions, further constraining their capacities. Therefore, rather than a lack of action on the part of these binational institutions to

address cross-border environmental problems, it was the framework set up by the national governments that rendered these institutions ineffective. Eventually, the effectiveness of these institutions and cooperative mechanisms was further reduced when their countries faced new cross-border environmental challenges.

I argue thus that a common policy arena on environmental cooperation in North America did not exist before the negotiation and implementation of NAFTA and NAAEC. As one can notice, until the 1990s, there was no significant policy interdependence among the North American countries on environmental issues, i.e. they were sovereign and independent in the creation and implementation of policies within their own territories. Even if they interacted with their neighbours, such interaction had no significant impact on the making or implementation of domestic policies. Even in cases where this policy-making approach proved ineffective and even counterproductive, the national governments continued to favour domestic policy-making.

### 6.3. THE CREATION OF THE COMMON POLICY ARENA

At the start of the 1990s, the three North American governments started to negotiate NAFTA. According to Knox and Markell, environmental issues had not affected the negotiation and passing of its predecessor, CUSFTA, and had rarely been raised with respect to other agreements negotiated among the North American countries and with other countries in the preceding decades (2003, p. 1). Therefore, it was not expected that these issues would be of significant concern for the negotiation and passing of NAFTA. Yet, even before the start of the negotiations, civil society groups in Canada, Mexico and the United States began to raise concerns over the impact of increased trade and foreign investment in countries with different levels of economic development. Environmental groups in all three countries argued that NAFTA would have a negative impact on the environment of the three countries (see Weintraub, 1990; Shrybman, 1993; Husted and Logsdon, 1997). Although the focus of these concerns varied significantly between environmental groups and countries, most of these preoccupations revolved around:

- The further degradation of the environment in the US-Mexico border area (already affected by pollution from maquiladoras) as a result of increased cross-border trade;
- The establishment of environmentally-harmful foreign companies throughout the rest of Mexico; and,
- The lowering of environmental standards in a hemispheric race to the bottom for jobs and investments (Bugeda, 1998, p. 1592; Scott, 2003, p. 1).

In response to these demands, government officials in the three countries committed not to downgrade environmental standards or weaken environmental laws. Yet, some civil society groups and environmental non-governmental organisations (ENGOS) contended that NAFTA should incorporate means of enforcement, such as trade sanctions to ensure that the implementation of the agreement would not have detrimental effects on the environment. The national governments considered that such an approach would generate trade distortions that would hinder the gains expected from the implementation of NAFTA. However, without such safeguards, it was likely that environmental groups in the US, and to a lesser degree in Canada and Mexico, would continue to oppose the agreement and impede its passing in their corresponding legislatures. Therefore, to curb the opposition and ensure the passing of NAFTA, the national governments resolved to negotiate and implement the North American Agreement on Environmental Cooperation (NAAEC).

The implementation of NAAEC is thus commonly held to be an achievement of US, Mexican and Canadian civil society groups (see Bugeda, 1998; Knox and Markell, 2003; Hale, 2011). In this common understanding, the civil societies and ENGOS pressured the national governments into negotiating a side agreement for the protection and improvement of the environment that made the NAFTA bargain “significantly different [to that] they had originally envisaged” (Knox and Markell, 2003, p. 2). While there are grounds to hold this view, I argue that this explanation is partial, as it fails to capture the interests of the nation-states, and especially their heads of state, in delivering such an agreement. In other words, this explanation puts too much emphasis

on the concerns of ENGOs as the grounds for the negotiation and entering of NAAEC and the establishment of its supporting and related institutions, and gives insufficient attention to the consistent pursuit of state interests when explaining these developments. In the next section, I show how the national governments created an arena on environmental matters to continue pursuing their (economic) interests in negotiating and implementing NAFTA and to address some of the policy externalities resulting from their economic interaction.

### 6.3.1. THE PURSUIT OF THE NATIONAL INTERESTS OF THE NORTH AMERICAN GOVERNMENTS

By the start of the 1990s, increasing economic interaction between the US and Canada and the US and Mexico, in the form of rising intra-regional trade and foreign direct investment, had created considerable economic interdependence between them.<sup>73</sup> Given this economic interdependence, these countries' interactions with each other were of increasing importance to their individual domestic policy-making, as were the incentives to purposely expand it. In this context, economic interdependence began to develop into policy interdependence, that is, the implementation of a certain policy by a state began to impose costs upon or produce benefits for other states.

The three national governments had two sets of interests in the implementation of NAAEC and the establishment of a regional institution to oversee it: the primary national economic interest in securing the passing of NAFTA and a secondary social interest in protecting their citizens from (further) environmental degradation –especially those located in their shared border areas. In other words, the US, Canadian and Mexican governments negotiated the aforementioned agreement and created an institution to manage it, mainly to advance their interests in creating and implementing common rules on cross-border trade and foreign direct investment, and secondarily to address the environmental problems affecting their populations (which could not be resolved through domestic decision- and policy-making). A review of the positions of the

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<sup>73</sup> Trade with Canada and Mexico constituted about one quarter of the US' trade with the world, while the US accounted for almost three quarters of Canada's and Mexico's trade with the world (own calculations based on data from North American Transportation Statistics, 2012, Statistics Canada, 2013 and US Census Bureau, 2013).

governments in the drafting and negotiation of NAAEC and its spin-off, the Border Environment Cooperation Agreement, reveals the presence of these two sets of national interests.

#### UNITED STATES' INTEREST IN THE PROPOSAL AND NEGOTIATION OF NAAEC AND BECA

I argue that the negotiation and implementation of the North American Agreement on Environmental Cooperation and the Border Environment Cooperation Agreement was in the interest of the United States. Its government sought to negotiate and reach these agreements, to secure the passing of the NAFTA Implementation Act of 1993 in Congress, and to protect its citizens living in its border areas from (further) environmental degradation.<sup>74</sup>

On the one hand, a number of ENGOs, social and labour organisations had opposed NAFTA since its initial proposal. However, President Bill Clinton believed that if specific changes were made to the original NAFTA proposal, it could gain enough support in Congress to secure its passage. Whilst a large number of organisations opposed the agreement, Clinton focused only on those with enough political influence in the US Congress, to support the passing of the Act (and thus NAFTA) or to prevent them from disrupting the vote. On the other hand, the US had a secondary interest in protecting its citizens from (further) environmental degradation –especially of those located in its shared border areas, and most urgently those located along the US-Mexico border. This second set of interests stemmed largely from environmental problems that were then affecting the US-Mexico border. Although areas along the US-Canada border had faced problems similar to those experienced on the US-Mexico border, progress had been made to address them through both domestic and binational policy-making. Environmental problems affecting the US-Mexico border area had nevertheless proved harder to address due to the vast economic differential between the US and Mexico, the continuous growth in population, commerce and industry in the border area and the lack of investment on environmental infrastructure on both sides of the border.

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<sup>74</sup> The NAFTA Implementation Act is a US domestic instrument enacted by the US Congress that outlines the conditions set to the Executive for the approval and entry into force of the agreement (see US GPO, 1993).

For these reasons, before and during the negotiations of NAFTA, the US government was greatly interested in addressing the environmental problems related to the current and expected rise in cross-border trade and investment flows (see Carmona Lara, 1993, pp. 299-302). For instance, during the negotiations of NAFTA, then-Governor Bill Clinton criticised President Bush's approach, claiming that the "agreement appears to be lacking substantive provisions on [...] environmental clean-up in Mexico" and protection of the environment in the US-Mexico border area (1992, cited in The New York Times, 1992). Later, as President, Clinton instructed his administration to include these objectives in the negotiation of NAFTA. To achieve this objective, the Department of State made it clear to its negotiators that they had two objectives: First, ensuring that the economic and trade growth generated by NAFTA "is accompanied by increased cooperation between [...] governments on environmental issues; [and, second,] protecting the US and its citizens from environmental degradation" (US Department of State, 1998, p. 98).

Therefore, while it can be argued that the proposal to establish a side agreement to NAFTA on the environment resulted from the concerns expressed by civil society organisations, ENGOs, and state and local governments of the US communities along the border with Mexico, this is a partial explanation. I argue that the proposal, negotiation and implementation of the NAAEC, was mainly the result of the aforementioned interests of the US national government.

#### MEXICO'S INTEREST IN THE PROPOSAL AND NEGOTIATION OF NAAEC AND BECA

In the negotiation and implementation of NAAEC and BECA, the Mexican national government also had two sets of interests. First, the Mexican government had a primarily economic interest in securing the implementation of NAFTA and preventing the use of NAAEC and related institutions as a protectionist measure by the US and Canada. Secondly, the government had an environment-related interest in securing funding for the provision and improvement of environmental infrastructure for Mexico, or as a minimum, the communities along the US-Mexico border.

The economic interest in NAAEC was greatly determined by the position of Mexico in the NAFTA negotiations. The government understood that the signing of an agreement and creation of an institution to ensure the strengthening and enforcement of Mexico's environmental laws was necessary to attain NAFTA and thus secure for the country an improved access to the US market (Vega Cánovas, 2003; Clarkson, 2008, p. 120). Taking these measures would help the US Executive to improve the prospect of the NAFTA Implementation Act passing in the US Congress. Moreover, the Mexican government was interested in pushing forward NAFTA. This is because it considered that hold-ups in its negotiation and ratification would weaken the Mexican economy and disrupt the passage of important economic reforms in Mexico (Cameron and Tomlin, 2000, p. 180).<sup>75</sup> I argue then that the country's position on the environmental agreement was greatly determined by its position in the negotiations and its economic interest in preventing "disguised protectionism" from the US and Canada (Cameron and Tomlin, 2000, p. 185).

Finally, Mexico had a secondary interest in tackling the environmental degradation that was taking place in the area along its border with the United States. As mentioned above, at the beginning of the 1990s, the industrial and population growth experienced along the US-Mexico border coupled with a deficient provision of environmental and sanitation infrastructure had severely degraded the environment of the area. Despite the continued rise in trade and manufacture, investment in the provision of public services and environmental infrastructure had not followed suit. While the federal government found it politically contentious to allocate funds to an area that was on its way to become one of the wealthiest regions of Mexico, the

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<sup>75</sup> However, the circumstances mentioned above do not imply that Mexico was willing to accept and support all the US proposals in order to attain NAFTA. When the Clinton administration stressed the need for a supplemental agreement on the environment and suggested that such an agreement should establish a regional institution with powers to enforce its provisions as well as national environmental laws, Mexico deemed the proposal inadmissible and dismissed it (Cameron and Tomlin, 2000, p. 184). In its consideration, the establishment of tough environmental and region-wide regulations enforced by a powerful regional institution constituted an attempt by the US and Canada to protect their markets from Mexican competition (see Carmona Lara, 1993). Mexico was also wary that the establishment of such agreement would bring down the flow of foreign direct investment to the country, while its market was being opened to US and Canadian products. Therefore, Mexico discarded the implementation of a strong NAAEC and a powerful CEC, since it considered that such rules and an institution in this capacity, could curtail the free flows of trade and foreign direct investment to and from Mexico.

municipal and state governments lacked the funds to tackle these problems, thus creating a complicated situation for border communities.

Therefore, when the US national government proposed to establish a regional institution charged with overseeing and enforcing environmental laws across North America, Mexico responded with the proposal of a North American development fund to tackle the deficiencies of physical infrastructure in Mexico, including environmental ones, through the provision of financial grants. Although, the US and Canadian governments recognised the need to develop infrastructure in Mexico, Canada dismissed participating in such a fund, while the US found the proposal politically contentious (Zamora, 2008, p. 121). As a result, the proposal was scaled down to the provision of financial support for the improvement of environmental infrastructure along the US-Mexico border. Although such proposal was acceptable to the US, it was still of no interest to Canada. The two countries thus negotiated and implemented the Border Environmental Cooperation Agreement, a bilateral agreement parallel to NAFTA, that established the North American Development Bank (NADBank) and its sister institution, the Border Environmental Cooperation Commission (BECC).

Therefore, the proposal, negotiation and implementation of agreements and establishment of institutions to foster the protection and improvement of the North American environment and especially their shared border regions, can also be seen as in the interests of the Mexican government.

#### CANADA'S INTEREST IN THE PROPOSAL AND NEGOTIATION OF NAAEC AND ITS LACK OF INTEREST IN BECA

Canada's interest in the negotiation of NAAEC and its lack of interest in BECA responds to the same two sets of interests identified in the instances of the US and Mexico. The primary economic interests of the Canadian government on these agreements were to ensure the attainment of the main text of NAFTA and prevent the occurrence of protectionism through the establishment of trade sanctions for non-trade issues, i.e. the environment (Cameron and



Tomlin, 2000, p. 198). In addition, Canada had a secondary interest in protecting its territory and population from (possible) environmental degradation resulting from downward competition for jobs and investments against the US and Mexico.

The economic interests of Canada in entering NAFTA have been previously analysed in this thesis. Faced with the prospect of a US-Mexico free trade agreement, Canada joined the negotiations to protect its own free trade agreement with the US. Therefore, for the Canadian government, the negotiation of the side agreements was only “a minor issue” toward realising NAFTA, even if the implementation of such agreements was politically contentious (Cameron and Tomlin, 2000, p. 206). Although Canada supported the establishment of a regional institution that promoted the protection of the environment in North America, it found the idea of an independent commission with sanction powers “particularly difficult to accept” (Knox and Markell, 2003, p. 8). Later, it would oppose this idea altogether as it considered that the agreement and the institutions could be used by the US for protectionist purposes (see Cameron and Tomlin, 2000, p. 188-200; Clarkson, 2009, p. 15). As a result, up until the end of the negotiations, Canada continued to oppose the establishment of an institution that might risk the economic gains already achieved through CUSFTA as well as those expected from NAFTA.<sup>76</sup>

However, Canada had a secondary interest in the negotiation and implementation of NAAEC to prevent degradation of the environment resulting from downward competition for jobs and investments with the US and, especially, Mexico. In this regard, Canada’s aim was to prevent “the anticipated widespread negative outcomes (i.e., race to the bottom, pollution havens) [that might] emerge as an outcome of the economic integration of North America” (Environment Canada, 2007, p. 23). Specifically, the Canadian federal government wanted to prevent the provincial and local governments from competing with US and Mexican states on the basis of

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<sup>76</sup> During the negotiations, a Canadian representative argued that implementing trade sanctions for violations to environmental laws and regulations was an “overkill, dangerous for the US and Mexico and totally unacceptable for Canada” (Clarkson, 2009, p. 15). Also, on the same issue but later in the negotiations, Prime Minister Campbell directly intervened in the NAFTA negotiations and declared that Canada “did not support the use of trade sanctions for non-trade issues” (Cameron and Tomlin, 2000, p. 198).

lowering environmental laws and standards or their enforcement. In this sense, Canada found NAAEC useful to advance its interests in protecting the country's environment.

Finally, as recognised by the Government of Canada, the NAAEC addressed a need of the federal government to integrate its environment and economic agendas, while securing the gains achieved in CUSFTA (Environment Canada, 2007, p. 19). However, it is for these reasons that Canada declined to participate in establishing and funding an institution to clean-up and enhance the environment of the US-Mexico border area, or the rest of Mexico. While the Clinton administration, proposed that Canada contributed to the fund, the country saw little connection between these objectives and the facilitation of free trade or expansion of economic opportunities. Therefore, claiming that the proposed fund and institution primarily reflected binational concerns over the degradation of the environment along the US-Mexico border, the Canadian government made it clear that it had no interest in such a negotiation (Gantz, 1996, p. 1028). The resulting agreement and institution would be therefore negotiated only on a bilateral basis among the US and Mexico in parallel to NAFTA.

#### CONSIDERATIONS ABOUT THE PROPOSAL AND NEGOTIATIONS OF NAAEC AND BECA

To this day, most accounts of the development of the North American Agreement on Environmental Cooperation and the Border Environment Cooperation Agreement maintain that their proposal, negotiation and implementation were mainly the result of pressures from social and environmental organisations, which forced the North American national governments into entering an agreement that was substantially different to what they had foreseen. Yet, I have aimed to demonstrate that the US, Canadian and Mexican national governments consistently pursued and mostly achieved their national interests in the negotiations for an environmental agreement for North America. The current institutional framework existing in North America for the protection and enhancement of the environment greatly reflects such interests.

Moreover, in the negotiations, all three countries pursued the two same sets of interests –a primary economic one and secondary environmental one– even when such pursuance resulted in

the adoption of divergent positions and different strategies. All national governments were interested in attaining NAFTA in order to reap the benefits of a liberalised trade and increased investment. Yet, the US also used the agreements to address and tackle the problems generated in its border communities by the lack of environmental and sanitation infrastructure mainly on the Mexican side. Mexico used the agreement to secure the provision of funding to build or improve such infrastructure. Finally, Canada used the agreement to protect its gains achieved on CUSFTA. For both Canada and Mexico, the negotiation of the side agreement also contributed to ensuring that these mechanisms would not be used by the US for protectionist purposes. We can thus conclude that the creation of a common policy arena on environmental issues through the proposal, negotiation and implementation of NAAEC and BECA was primarily the result of intergovernmental bargaining between Canada, Mexico and the US. Had transnational actors been the key force shaping the development and outcome of the negotiations, the NAAEC would have been significantly stronger, characterised by strict and enforceable regional rules on environmental protection and backed by trade sanctions in cases of non-compliance.

The fact that national governments attained the main text of NAFTA while advancing their own economic and environmental interests shows that nation-states, and especially their heads of government, were primarily in control of the process. This account thus supports the claims of Liberal Intergovernmentalism, which maintains that nation-states can efficiently pursue their interests in negotiations, and that such interests are created through domestic contention through the setting of national preferences. Once groups within the nation-state determined the preferences, these became the national interests and thus the bargaining objectives of the nation-states. Liberal Intergovernmentalism satisfactorily explains why the US, Canadian, and Mexican national governments negotiated these agreements. In brief, the national governments of the three countries had enough incentives to purposely expand their economic interaction and address the policy externalities resulting from it, in this case environmental issues. Liberal Intergovernmentalism would thus argue that the national governments regarded the negotiation and implementation of the NAAEC as a requirement to achieve NAFTA and an opportunity to

address cross-border issues related to the protection of their related environments, especially along their shared border areas. The outcomes of these intergovernmental negotiations were the entering of the NAAEC and BECA, which set the rules of the common policy arena, and the establishment of institutions that would lock-in the commitments made in the negotiations.<sup>77</sup> I examine these outcomes in the following sections.

### 6.3.2. THE CROSS-BORDER RULES OF THE COMMON POLICY ARENA

The aforementioned negotiations resulted in the signing and entering of two agreements: the North American Agreement on Environmental Cooperation (NAAEC) and the Border Environmental Cooperation Agreement (BECA). From this point onwards, I argue that in addition to economic interdependence, there was policy interdependence between Canada, the US and Mexico as a result of the creation of a common policy arena on environmental protection. Jointly, these agreements established the cross-border rules on the conservation, protection, and enhancement of the North American environment. As such, they are subject to use by all actors involved in the arena, i.e. governmental, transnational and regional actors. In this section, I briefly examine these agreements' provisions before analysing how transnational actors expanded the policy arena using such rules, and why Supranational Governance better explains such expansion than Liberal Intergovernmentalism.

#### THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

At first glance, the objectives and provisions of NAAEC do not significantly differ from those set forth in other international instruments promoting the protection of the environment through increased intergovernmental cooperation. Its language and objectives reflect the preference of national governments for the promotion of cooperation over the creation of regional laws and regulations and the incorporation of concrete means of enforcement. This state-of-affairs is manifest in the two main objectives of NAAEC: fostering the protection and

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<sup>77</sup> As previously stated, an analysis of the negotiations of NAAEC is beyond the scope of this thesis and can indeed be found elsewhere in the literature. A more detailed description and analysis of the negotiations, and how they shaped the authority and functions of the CEC, can be found in McKinney (2000), Knox and Markell (2003) and Knox (2004).

improvement of the environment in Canada, the US and Mexico; and increasing cooperation between the three countries on the conservation, protection and enhancement of the North American environment. Given the concerns of civil society groups on the impact of trade and foreign investment on environmental laws, regulations and policies, the agreement also incorporated a third objective: enhancing compliance with and enforcement of environmental laws and regulations.

The first two objectives of the agreement were intended to promote intergovernmental cooperation. To accomplish them, the NAAEC recognised the *rights* of each country to establish its own levels of domestic environmental protection, to set its own environmental policies and priorities, and to adopt or modify accordingly its environmental laws and regulations. Yet, to accomplish its third objective, NAAEC established an *obligation* for the national governments: to ensure that its laws and regulations provide for high levels of environmental protection and strive to continue to improve those laws and regulations. In other words, NAAEC acknowledged the right of each country to establish its own environmental laws and determine the levels of protection that such laws afforded, but at the same time set an obligation for national governments not to undermine or disregard such laws. It is this last provision that constitutes the core of NAAEC, i.e. ensuring the *effective* enforcement of domestic environmental laws throughout North America.

To ensure the fulfilment of this obligation, NAAEC, first, opened supervision of effective enforcement of domestic environmental laws to all individuals and non-governmental organisations in North America, and second, established a regional institution to oversee the Agreement: the Commission for Environmental Cooperation (CEC). The CEC is the regional institution on environmental issues. Its mission is to facilitate collaboration among national governments and foster public participation for the conservation, protection and enhancement of the North American environment. It is made of a Council, a Secretariat and a Joint Public

Advisory Committee (JPAC).<sup>78</sup> The Council is composed of the environmental ministers of each country and is the governing structure of the Commission. The Secretariat is the supporting body of the Commission and is charged with assisting the Council and its working groups in the accomplishment of their functions. The Secretariat is also responsible for considering citizen submissions on enforcement matters –an issue which is discussed at length in this chapter.

In sum, the NAALC sanctioned the public to look after the environment beyond the borders of their own national states, and created a regional actor which has the authority to address “almost any environmental issue that might arise in the continent” (Knox and Markell, 2003, p. 11). In the US-Mexico context, these rules were reinforced through the implementation of the Border Environmental Cooperation Agreement.

#### THE BORDER ENVIRONMENTAL COOPERATION AGREEMENT

The rationale and main aims of the Border Environmental Cooperation Agreement (BECA) are very similar to those of NAAEC. It intends to strengthen cooperation between the US and Mexico on border environmental issues and prevent damage to the environment resulting from the implementation of NAFTA. The most important outcome of the implementation of BECA was the establishment of the sister institutions charged with evaluating and financing environmental infrastructure projects in the US-Mexico border: the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADBank).

I argue that just as in the negotiation of NAAEC, the national interests of Mexico and the US in the proposal, negotiation and implementation of BECA were economic and environmental. The US supported it to gain congressional support for NAFTA from US states along the Mexican border and to enhance the environmental conditions in its south-western border area (McFadyen, 1998). Mexico regarded it both as requisite to attain NAFTA and an opportunity to

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<sup>78</sup> The JPAC is charged with the mission of fostering participation from the public on the activities of the Commission. It is also aimed at ensuring transparency in the activities of CEC and advising the Council and Secretariat on environmental priorities and issues of concern to the North American public. Despite its importance, the JPAC is not further discussed in this thesis, in order to prioritise the analysis of the institutions which have played a role in the cases that I discuss later in this chapter.

address the environmental infrastructure deficiencies in its northern border area and advance the well-being of its residents (BECC, 2009).

The BECA created two institutions: the Border Environment Commission Cooperation (BECC) and the North American Development Bank (NADBank). They are charged with improving the environmental conditions of the US-Mexico border region through the provision of administrative and financial support for the development of environmental infrastructure.<sup>79</sup> For all environmental projects applying for NADBank funding, it is requisite that their long-term financial sustainability is ensured for the sponsor, investors and intended beneficiaries. In its dual structure, BECC revises and certifies the technical, environmental, and social aspects of such environmental projects, and NADBank finances them. In contrast to existing institutions in the US-Mexico context, the BECC and NADBank are permanent institutions (i.e. they are not subject to administration changes) with specific mandated functions and quasi-independent financial resources to fulfil them.

Along with the Commission for Environmental Cooperation, the BECC and NADBank constitute the regional actors of the environmental common policy arena. I argue that the creation of these institutions responds to the commitments that the North American national governments made with each other in order to enhance and further their capacities to address environmental issues and reduce the transaction costs of intergovernmental interaction and cooperation. To ensure that other states would not pull out of these agreements, the national governments locked-in their commitments in the form of regional institutions, with well-defined responsibilities and constrained powers and resources to accomplish them. As originally established, the regional institutions merely constituted utilitarian actors whose role in the process was intended to be limited to enhancing the actions of national governments. This account thus supports the Liberal Intergovernmentalist view of supranational, or in the case of North America, regional institutions as mere passive sets of rules created and existing only to enhance the credibility of intergovernmental commitments (Moravcsik, 2006, p. 292).

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<sup>79</sup> Specifically water supply, wastewater and solid waste treatment projects.

Yet, I argue that over time, the regional institutions that the national governments established as mere confirmation of their common interests have evolved beyond what was established in the original NAFTA and NAAEC bargain. I argue that this outcome resulted from the activity of transnational actors, who used and applied the rules of the North American agreements on the environment, and thus prompted the action of regional institutions beyond what was originally envisaged by the national governments. This progression thus supports the account of Supranational Governance of the process of regional integration and this thesis' claim that this policy arena has institutionalised.

#### 6.4. THE EXPANSION AND CONSOLIDATION OF THE COMMON POLICY ARENA

NAAEC and BECA jointly set in place the cross-border rules and the regional institutions of this common policy arena. Yet, as has been claimed in this thesis, the expansion and then consolidation of the arena only occurs through the use of such rules, the demand for new rules by transnational actors and the supply of those rules by regional organisations through regional policy-making. I argue that transnational actors have catalysed and sustained the expansion of this arena. These actors are individuals and non-governmental organisations residing or established in the US, Canada and Mexico who have engaged with these agreements and institutions. From the entering into force of the agreements they have used, applied and interpreted the cross-border rules in their exchanges across national borders. In doing this, they have aimed at protecting (i.e. addressing the externalities that result from increased cross-border transactions) and enhancing the North American environment.

The two agreements afforded new privileges to these individuals and non-governmental organisations to participate in the arena. While a number of them decided to oppose the agreements altogether, others began to apply and interpret the new rules to test their power and limits. Although the new rules covered a range of issues on the protection and enhancement of



the environment, most individuals and non-governmental organisations who engaged with NAAEC and BECA centred their attention on three specific sets of rules:

- NAAEC's enforcement of and compliance with domestic environmental laws through the citizen submissions procedure;
- NAAEC's promotion of public participation in the protection and enhancement of the environment; and,
- BECA's provision and facilitation of resources for environmental projects.

Overall, these rules aimed to improve the effectiveness of the agreements, as well as of the institutions that had been put in place to oversee the implementation of their provisions, through the participation of the North American public (Raustiala, 2003, p. 257). Given that the national governments considered that NAAEC and BECA's institutional structure still significantly relied on their acquiescence to implement a number of these provisions, they did not expect significant engagement with the agreements. In the view of national governments, most rules provided narrow channels for the participation of transnational actors, and thus the kinds and numbers of concrete results that transnational actors could expect from the use of such mechanisms were limited (Grandbois and Bouchard, 2011). In the following pages, I further elaborate on the content of these rules and provide an example of how transnational actors have used the mechanisms available to them to prompt change in the behaviour and actions of the national governments.

#### 6.4.1. NAAEC'S RULES ON ENFORCEMENT OF AND COMPLIANCE WITH DOMESTIC ENVIRONMENTAL LAWS THROUGH THE CITIZEN SUBMISSIONS PROCEDURE

Beyond the non-adversarial intergovernmental consultations procedure, NAAEC did establish another formal mechanism to oversee and enforce the compliance of the North American countries with their own domestic laws on environmental protection. This mechanism, created by Articles 14 and 15 of NAAEC, and commonly known as the citizen

submission procedure, entitles the North American public, i.e. individuals and NGOs residing or established in any of the three countries, to request the initiation of investigatory actions against Parties to the agreement deemed to be failing to enforce their own environmental laws. It is important to note that the procedure allows *any* member of the North American public to request the initiation of the Submissions on Enforcement Matters (SEM) process, even if they are not directly related to the issue that gave rise to the submission.<sup>80</sup>

If the submission is accepted, the Secretariat of the Commission for Environmental Cooperation determines whether the submission merits a response from the national government in question. If such response is not satisfactory, the Secretariat might recommend to the Council the creation of a factual record, which is a dossier with information regarding the enforcement of domestic environmental law in the country complained against concerning the issue at hand. If the Council deems it necessary and authorises the Secretariat to prepare a factual record, the process can eventually result in the public release of the record. Given its condition as a fact-finding, non-adversarial procedure, the SEM process cannot require a Party to take specific remedial actions. Yet, to compensate for this lack of direct sanction power, CEC employs a regulatory strategy of ‘sunshine’ –i.e. forcing parties to respond to complaints and creating factual records which “force states to explain, and to give reasons for, their conduct and administrative choices. In this sense, the citizen submissions process is an example of ‘complaint-based monitoring’” (Raustiala, 2004, p. 397).

From the entering into force of NAAEC, transnational actors began to use and test the power and limits of the citizen submission procedure. From its implementation in 1994 until the end of 2012, the Secretariat of the Commission for Environmental Cooperation had received eighty-one citizen submissions -40 of these concerning Mexico, 30 concerning Canada and 10 concerning the United States.<sup>81</sup> Most of the submissions have been filed by ENGOs against failures of enforcement of domestic environmental laws by their own national governments.

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<sup>80</sup> This means that, for instance, “Mexican NGOs can complain about enforcement failures in Nova Scotia, [Canada, while] US NGOs can complain about enforcement failures in Tijuana”, Mexico (Raustiala, 2003, p. 260).

<sup>81</sup> 11 of which were still active as of March 2013.

Yet, individuals have also engaged with the citizen submission procedure. After the corresponding enquiries by CEC, 18 citizen submissions out of the eighty-one submitted resulted in the publication of factual records by the Council –in other words, one out of every five submissions– resulted in the creation of a factual record (CEC, 2013).<sup>82</sup> Therefore, contrary to what national governments expected, transnational actors proactively used and applied the rules on various cases to prompt change in the behaviour of governments at all levels. I argue that this is when cross-border rules began to expand as a result of transnational activity, thus gathering support for the claims of the Supranational Governance over those of Liberal Intergovernmentalism on the importance of supranational institutions, and more importantly, transnational actors.

Some scholars assert that the empirical impact of the submission process is mixed (see Raustiala, 2003; Grandbois and Bouchard, 2011). While some citizen submissions have been deemed as successful by the submitters, inasmuch as they shifted the behaviour of states towards the effective enforcement of a given environmental law, others were considered ineffective. Yet, as I explain in the following pages, NAAEC's rules on enforcement of and compliance with domestic environmental laws have provided individuals and non-governmental organisations with a mechanism to challenge the decisions of national governments beyond the channels afforded by their own national states to promote change at the domestic level. The 1996 Cozumel case illustrates how this mechanism works and advances the demands of transnational actors for the protection of the North American environment. In the context of the Supranational Governance framework, the case is an example of the use and application of rules by transnational actors and the action of regional institutions to respond to these demands. In doing this, transnational actors, in conjunction with regional institutions expanded and consolidated the common policy arena.

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<sup>82</sup> Eight of these factual records related to Mexico, nine related to Canada, and one related to the US.

## THE 1996 COZUMEL CASE

The Cozumel case was one of the earliest and most successful cases of complaints filed through the citizen submission process. The case related to the construction and operation of a public harbour terminal in Cozumel, State of Quintana Roo, Mexico, which was being developed within the limits of the protected natural area. The local community, municipal and state authorities and US and Mexican ENGOs (see Kibel, 2001, p. 455) alleged that the project represented an immediate danger to the survival and development of the Arrecife Paraíso and the Caribbean Barrier Reef, the largest barrier reef in North America. These groups alleged that the federal authorities had failed to enforce environmental laws related to the construction and operation of the harbour. The submitters claimed that the federal authorities had disregarded the detrimental impact of the project (CEC Secretariat, 1996, p. 8).

To address this issue, a local NGO filed an administrative complaint against the federal government. However, under Mexican law, NGOs do not have standing to sue the government unless they can demonstrate direct injury resulting from the alleged violation, which is interpreted very narrowly by Mexican courts. Therefore, the Federal Agency for the Protection of the Environment did not take action (Kibel, 2001, p. 460). In light of this failure to enforce its own domestic laws, three Mexican ENGOs filed a citizen submission before CEC. After evaluating the citizen submission, the Secretariat admitted it and requested a response from the Mexican federal government.

## THE RESPONSE OF REGIONAL INSTITUTIONS

The federal government responded to the request in an adversarial manner. It claimed that the project had “nothing to do” with the existing protected natural area since the conditions of the reef had substantially changed over the past decades, and thus it no longer required protection (CEC Secretariat, 1996, p. 15). It also claimed that the petitioners had not exhausted the domestic legal and administrative resources available and had failed to demonstrate direct harm to them as a result of the project. Further, the government asserted that the evaluation of the

environmental impact of the project and the granting of permission for its construction and operation had taken place prior to entering into force of the NAAEC. In the view of the government, the NAAEC was thus being applied retroactively, making the submission inadmissible (CEC Secretariat, 1996, p. 12). Finally, the federal government claimed that, in the granting of permissions for the construction and operation of the harbour terminal, it had exerted “reasonable discretion” in the oversight and enforcement of environmental laws, in light of the substantial amount of investment and number of jobs that would result from the project (Kibel, 2001, p. 452).

In light of this response, the Secretariat of the Commission for Environmental Cooperation (CEC) considered the creation of a factual record. By June 1996, only six months after the submission, it informed the Council that it deemed the governmental response unsatisfactory and proposed the development of a factual record. This was the first time that CEC’s Secretariat used the provisions of NAAEC to scrutinise whether a government had failed to enforce its own domestic environmental laws.<sup>83</sup>

The federal government accurately stated that Article 14 limited the scope of inquiries to allegations of *current* failures to enforce environmental laws. However, the Secretariat argued that the issues dealt with in the submission were “within the spirit and intent” of the NAAEC (1996, p. 5). In other words, rather than adhering to the textual application of the North American Agreement on Environmental Cooperation, the Secretariat *interpreted* its normative purpose. In this respect, Kibel argues that even if the project was technically consistent with Mexican environmental laws, it was inconsistent with the fundamental objectives of such laws and the underlying objectives and obligations of NAAEC for the protection of the environment (2001, p. 469). Given this apparent contradiction between the contents and the purpose of environmental law, the Secretariat stated that the “study of this matter would substantially promote the objectives” of NAAEC, because the agreement is ultimately aimed at strengthening

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<sup>83</sup> Other five citizen submissions had previously been filed since the entering into force of NAAEC. However, none of them had satisfied the procedural requirements established in Article 14 or warranted the development of a factual record as established in Article 15 (Kibel, 2001, p. 464).

domestic environmental laws and supporting the protection of biodiversity (CEC Secretariat, 1996, p. 5). On this basis, it determined that the submitters had fully complied with the requirements of NAAEC.

The Mexican government had also accurately claimed that in accordance with Article 14, the Secretariat was unable to consider any issues that would give retroactive effect to NAAEC, i.e. it was unable to consider citizen submissions concerning actions taken before the Agreement came into effect in 1994. Yet, the Secretariat dismissed this objection. It claimed that although NAAEC was not in force when the problem started, such problems had not ceased to exist. Thus, even if it did not call for the examination of actions that occurred prior to the entering into force of NAAEC, it stated that any evidence pre-dating 1994 regarding actions taken after that year, would help to clarify whether the Mexican government was currently failing to enforce its laws (CEC Secretariat, 1996, p. 4). In doing so, the Secretariat interpreted the purpose of the Agreement to exercise and expand its powers, in order to compel the federal government into explaining its actions and decisions in the case.

The Secretariat put this suggestion to the consideration of the Council, which unanimously resolved to develop a factual record. It also resolved that in considering such failure, the Secretariat could investigate and include actions taken prior to the entering into force of NAAEC in 1994, “noting that the allegations addressed on-going, not just past, enforcement obligations of [the federal] government” (Graubart, 2008, p. 114). The Secretariat gathered evidence and produced a final record on December 1997. While, as stated in NAAEC, the Commission did not put forward a deliberation or recommendation, the factual report provided evidence for the allegations of the ENGOs on the failure of the federal government to enforce Mexican environmental laws.

#### THE EFFECT ON GOVERNMENTAL ACTORS

It cannot be said that because of the development of the factual record, the behaviour of the Mexican federal government over the Cozumel case significantly changed. Despite its

publication, the government continued and completed the construction of the harbour. Yet, the creation of the factual record enabled the mobilisation of social and political groups that questioned the actions of the federal government. With the information provided in the factual record, which “proved that the Mexican government [had] violated the law”, Mexican ENGOs and US environmental activists continued to campaign against the project (Kibel, 2001, p. 469). The publication of the factual record furthered this campaign, which was deemed as a success inasmuch as it prompted the government to improve the laws on the protection of endangered coral reefs, to develop a new environmental plan for Cozumel and, eventually, downsize the project. Further, as a result of this campaign, the area was declared a National Park –a protected status higher than its original one– and the ENGO which had filed the petition in the name of its two co-submitters was included in its management plan (Graubart, 2008, p. 116).

Therefore, while the creation and publication of the factual record did not shift the Mexican federal government’s behaviour on the issue per se, the joint actions of the corresponding transnational actors and regional institutions did produce a change and compelled “the Mexican federal government to take action it had previously resisted. [The Cozumel case thus] signalled to the North American public that the petition process had political bite, when gaining Secretariat support, and used” effectively (Graubart, 2008, p. 116). In this case, transnational actors used the rules that national governments had put in place and tested the limits and power of such rules. Meanwhile, the regional actors understood and fulfilled their mandates, which had also been determined by governmental actors. However, in the fulfilling of those mandates, they also clarified, expanded and improved the cross-border rules and expanded their powers. Although, at first glance, these developments did not significantly alter the behaviour of a governmental actor, they led to important policy changes that would not have been possible without the existence and use of Articles 14 and 15 of NAAEC.

In the framework of Supranational Governance, this would represent an instance of institutional development resulting from the evolution of rules. Stone Sweet, Fligstein and Sandholtz argue that when actors use the rules of a given common policy arena they might encounter tensions

and contradictions between such rules (as well as between cross-border rules and domestic ones). As regional institutions (or less likely, national governments) clarify the rules or resolve these tensions, they improve and expand them (2001, pp. 9-10). The common policy arena thus grows with each rule that is improved and expanded. This process, however, is not automatic. It results from the competition between governmental, transnational and regional actors, who are “forced to battle in self-interested ways, over the meaning of rules” (2001, p. 11). Had transnational actors in the environmental arena not used the rules, regional institutions would have probably been less able to clarify, interpret or modify existing rules and generate new ones. For instance, the Commission for Environmental Cooperation would have been unable to rule on the pertinence of the Submission on Enforcement Matters mechanism to accept cases that originated before the implementation of NAAEC in 1994 for review. I argue thus, that the Cozumel case is an example of transnational actors, expanding and, in conjunction with regional institutions, consolidating the common policy arena, through the use of cross-border rules.

#### 6.4.2. NAAEC’S PROMOTION OF PUBLIC PARTICIPATION IN THE PROTECTION AND ENHANCEMENT OF THE ENVIRONMENT

Soon after its establishment, the Commission for Environmental Cooperation (CEC) noticed the existence of an information-distribution gap on the existence of North American cross-border rules on the environment (2000, p. i). Although rules existed, and if demanded, could be revised, modified and expanded by the regional institutions (or national governments), the Commission deemed that transnational actors would only engage with such rules if they knew that they existed and had sufficient resources to do so. In short, if transnational actors did not know or could not access the regional rules, they would not use them. Therefore, the CEC determined that another important aspect of the setting of cross-border rules was *enabling* transnational actors to use them.

The Commission noted that ENGOs and other civil society organisations in the three countries had actively demanded the establishment of cross-border rules on the protection and enhancement of the environment. Yet, it recognised that a number of individuals and



communities had little to no knowledge of the creation and entering into force of NAAEC, the establishment of CEC and the ways in which they could participate in the protection of North America's environment. Further, even if a number of transnational actors knew about the existence of these rules, some of them still did not understand the role of the Commission. The CEC thus deemed it necessary to ensure that individuals and communities had the knowledge about its own work as well as the objectives and provisions of NAAEC.

At the same time, a number of individuals and communities had expressed their longing to increase public participation in the conservation and protection of the environment (see CEC, 2000). Although a number of actors had called for the Commission to support local efforts on these issues, the NAAEC had not mandated the Commission to support such efforts. Instead, the NAAEC was deliberately aimed at promoting governmental action and cooperation, requiring limited interaction with the regional organisations and equally limited input from transnational actors. Therefore, while there was a demand for community-based initiatives to solve regional environmental challenges, there was no mechanism in the NAAEC to turn these initiatives into action.

#### THE NORTH AMERICAN FUND FOR ENVIRONMENTAL COOPERATION

In light of these circumstances, in 1996, the CEC determined the establishment of the North American Fund for Environmental Cooperation (NAFEC) to fund community-based projects in the US, Mexico and Canada. I argue that this was another instance of improvement and enhancement of the cross-border rules that promoted public participation in the protection and enhancement of the regional environment. Its establishment responded to the demands of transnational actors for better means to participate in the protection of the environment, and the actions of regional institutions, which delivered such changes to the cross-border rules.

To substantiate these demands, transnational actors used the rules of NAAEC. However, just as it occurred with the citizen submission process, rather than looking into specific operational provisions of NAAEC, transnational actors looked at the intent of its main objectives. They

argued that there was a strong case in the objectives of NAAEC to promote public participation in the protection and improvement of the environment in North America and even the development of regional environmental policies (Mumme and Lybecker, 2011, p. 153). It is important to note that most of the provisions of NAAEC bind and are only intended to be fulfilled by the national governments rather than non-state actors. Yet, transnational actors saw the NAAEC as creating a “niche” for public participation in the management of the environment (Paquin, Mayrand, and Sbert, 2003, p. 4; Mumme and Lybecker, 2011, p. 151).

Further, they argued that the rationale behind the establishment of NAAEC was the strengthening of the capacity of the countries, including their citizens, non-governmental organisations and the public, to protect the environment. During the negotiations of NAFTA and NAAEC, individuals, communities and ENGOs had demanded national governments and regional organisations to ensure public participation in CEC’s projects, to build capacity at the grassroots level for addressing issues of common concern for the three countries, and to facilitate the elaboration of regional environmental strategies (CEC, 2000; Johnson, 2000; Graubart, 2008). These demands had not receded and, on the contrary, had gained salience after the implementation of NAAEC, due to the lack of an environmental program that funded community-based projects and operated at the North American level. They argued that numerous other domestic funding programs were already supporting environmental activities in Canada, Mexico and the US, but that a *regional* program that reflected the growing social and economic integration of North America was yet to emerge. On this basis, transnational actors demanded the creation of a North America-wide fund that would contribute to foster cooperation for the protection of the environment. To achieve this, they proposed the creation of a fund which would support and involve local communities in the development of environmental projects at the grassroots level.

#### THE SUPPLY OF NEW AND BETTER RULES BY REGIONAL INSTITUTIONS

The Council expressed its interest in engaging communities in the protection of the environment through the establishment of such a fund. In this sense, the regional institution was responsive to

the demands of transnational actors and proactive in interpreting its mandate and expanding its powers and responsibilities. Although the Council recognised that the establishment of a fund to support local environmental projects had not been mandated in the NAAEC, it argued that the agreement already provided other tools for public participation, such as a procedure for filling citizen submissions (CEC, 1998, p. 12). According to the Council, the establishment of a fund for local environmental projects thus “found expression [and just] expanded” such provisions (CEC, 1998, p. 12). The Council also argued that the implementation of this fund would allow the public access to its work; build up capacity among non-governmental actors to protect and enhance the North American environment; and create regional networks on environmental issues (CEC, 2000, p. ii). Therefore, as a response to the aforementioned demands of civil society groups, and out of its proactive stance towards the promotion of the cross-border cooperation, the CEC implemented the North American Fund for Environmental Cooperation (NAFEC) in 1996.

The NAFEC, however, joined an already large number of national programmes in the three countries focused on funding and financing environmental projects. Thus, to differentiate it from competing programmes and funds, the Commission made it the first *North American* environmental fund. To achieve this goal, the Commission resolved to support community-based projects throughout the whole of North America, rather than focusing only on border areas as existing funds did. Once more, the Commission was interpreting and advancing its powers –this time by expanding the ‘jurisdiction’ of the proposed NAFEC to the territories of the three countries. The Commission also determined that it would prioritise funding to projects that promoted awareness and understanding of the links between economic processes (e.g. the implementation of NAFTA) and the preservation of the North American environment.

Overall, it can be claimed that NAFEC was successful in involving community-level groups in environmental problem-solving and protection. During its eight years of operation, NAFEC awarded almost 200 grants for a value of more than of USD \$9 million (Carpentier, 2009, p. 3). On average, CEC received 15 applications for each grant it awarded, thus demonstrating a

significant interest from transnational actors in participating. I argue that awarding these grants advanced the interests of the grantees, inasmuch they secured funding for projects that local, state, provincial or national governments had not yet supported.

Moreover, the creation and functioning of NAFEC, also contributed to advance the position of the Commission for Environmental Cooperation. The requests and reports made by grantees informed the regional institution about “changes and new developments in the environmental sphere. By informing CEC and its stakeholders of these trends, grantees participated in the [policy-making] process without necessarily being in direct contact” with national governments (CEC, 2000, p. 13). Instead, the Commission accumulated and mediated their input, which it used in their consultations and contacts with national governments. In the view of CEC, the NAFEC “created a natural network and information clearinghouse by virtue of the fact that it receives over 400 proposals each year and a wealth of information about environmental work [needed] in North America” which national governments might have overlooked (CEC, 2000, p. 17). This development thus supports the claims of Supranational Governance, that it is possible for transnational actors to possess better information on the actual progression of the integration process. In the case of the NAFEC, transnational actors possessed better information on the lack of a fund to support environmental projects at the grassroots level. I argue that these actors, in conjunction with the regional institutions, used this informational asymmetry to their advantage in order to advance their demands and interests vis-à-vis those of the national governments.

#### THE EFFECT ON GOVERNMENTAL ACTORS

The North American governments were not necessarily enthusiastic supporters of the creation and operation of the NAFEC. Although there are conflicting accounts of the reasons for which national governments opposed the NAFEC, most of them point to three different reasons: the non-existence of a NAAEC mandate to establish such fund; the declining interest of the Canadian and Mexican national governments in funding transnational projects; and, most likely, the *alleged* decline in applications for bilateral projects.

The first explanation is that despite the probable positive impact of the NAFEC on the promotion of protection of the North American environment, the national governments were not keen on funding a non-mandated activity (see Glumac, 1997, p. 1; CEC, 2009). A number of individuals and (environmental) non-governmental organisations in the three countries had actively engaged with NAAEC's provisions and CEC's activities, and the Council was proactively looking to expand such activities. Yet, the national governments considered that the creation of such a fund would be "especially problematic" as it would entail diverting a significant part of CEC's annual budget towards a non-core programme (Wirth, 2003, p. 202). Yet, this position fails to explain the reason for which national governments funded the NAFEC in the first place.

The second explanation is that even before the operation of NAFEC, the Canadian and Mexican governments had already felt coerced into "accepting the [NAFTA's] environmental side-agreement" as a whole (Carpentier, 2009, p. 6). Such pressure might have thus impinged and hindered the prospects of further trilateral cooperation, including the continued funding of NAFEC. While this alternative explanation cannot be confirmed through official statements or documents, the decisions taken by the Mexican and Canadian national governments in relation with the NAFEC do suggest that they opposed the continued existence of the fund. For instance, Wirth asserts that even when Canada and Mexico were informed by CEC that the overall budget of NAFEC was becoming insufficient to deal with the rapidly-growing number of applications, they decided not to increase their contributions to the fund –not even when the US EPA offered to double its correspondent contribution (2003, p. 203).

However, the third and most probable explanation is that the national governments expected the NAFEC to fund more binational projects rather only 'local' ones. Sabet claims that one of the objectives of NAFEC was to encourage binational cooperation (2005, p. 475). While the Commission had awarded a large number of grants for binational projects, their number was

said to be declining after only two years of operation of the fund.<sup>84</sup> Therefore, it is likely that such perceived shift influenced the position of national governments to discontinue their support of the NAFEC (see US Department of State, 1997). Indeed, after the end of its second year of operations the NAFEC's budget –which had been set at around USD \$1 million per year– was progressively reduced to almost 60 per cent of its original budget. It is possible that national governments might have considered that NAFEC was no longer producing the expected opportunities and incentives for binational cooperation, and therefore, it had become of little importance to the accomplishment of their national interests (see Sabet, 2005; p. 475-176).

The reduction of national contributions to the NAFEC stymied the effectiveness of the program. While the budget declined, its administration costs remained constant, and therefore the ratio between administration costs and funding awarded to projects became disproportionate (CEC, 2000, p. 29). That year, the Secretariat requested an evaluation of the effectiveness and impacts of NAFEC in order to provide the Council with recommendations on the future of the fund. The report confirmed that the operation of NAFEC had significantly contributed to achieving the goals and objectives of the Commission, had created North American networks on environmental issues, and had enhanced public access to and gained support to the work of CEC (CEC, 2000, pp. i,ii). Despite these achievements, the national governments decided not to return its budget to adequate operating levels and thus, in 2003, the fund concluded its activities.

The decision of the national governments to cut funding to the NAFEC, which in turn led to the termination of the programme, support the arguments of Liberal Intergovernmentalism about the primacy of the decisions of governmental actors over those of supranational ones. In this understanding, even when the regional actors attempted to gain salience on the direction and pace of the process, national governments only allowed those initiatives which advanced their individual (mainly economic, secondarily environmental) interests. Yet, I argue that the creation and functioning of NAFEC helped the other regional institutions, namely BECC and NADBank,

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<sup>84</sup> In fact, the number of grants provided to binational or trinational projects remained stable for the length of the operation of the NAFEC. Out of the 196 grants made between 1995 and 2003, 79 of them were binational or trinational in scope (CEC, 2004, cited in Aspinwall, 2012, p. 11).

to gain expertise on the ways to incorporate public participation and community working into their agendas and, more importantly, to expand their own mandates, powers and responsibilities as they responded to the demands of transnational actors. Even if the existence of NAFEC was limited, its creation and functioning contributed to enhancing the position of the Commission, to broaden its mandate beyond what the national governments had determined in the original bargain. Once again, these developments support the claims of Supranational Governance about the pursuit of their interests by transnational actors, and the ways in which regional organisations advance the demands of these actors in their own pursuit of increased powers and responsibilities, thus advancing integration between countries.

#### 6.4.3. BECA'S PROVISION AND FACILITATION OF RESOURCES FOR ENVIRONMENTAL PROJECTS

##### THE BORDER ENVIRONMENT INFRASTRUCTURE FUND

The creation of the Border Environment Infrastructure Fund (BEIF) is another instance in which transnational actors used the mechanisms available in the North American agreements to prompt change in the behaviour and actions of national governments. As I explain in the following pages, the demands of border communities, in conjunction with the actions of the BECC and NADBank, led to the improvement and enhancement of the cross-border rules of the common policy arena. In doing this, both actors advanced their interests related to the protection and improvement of the United States-Mexico border environment and altered the rules that the national governments had set out in the original bargain, i.e. the Border Environment Cooperation Agreement. Given that I have previously explained the mandate and responsibilities of the BECC and NADBank, in this section I will only explain the changes that transnational actors and regional institutions prompted in the cross-border rules.

As set forth in the Border Environment Cooperation Agreement, the NADBank is charged with financing financially feasible projects that preserve and enhance the environmental conditions and quality of life of people living along the US-Mexico border. The two national governments

equally capitalise the Bank with a budget of USD \$3 billion. Although this financial commitment may appear to be sizable, only 15% of this budget is in the form of ‘paid-in capital’, that is, actual cash funds contributed to NADBank that are available for investment. The remaining 85% is in the form of ‘callable capital’, that is funds pledged to be provided to NADBank only if they are required to meet its financial obligations. This capitalisation arrangement is intended to preserve the capital of the Bank, protect its creditors and ensure its operational integrity (Carter and Ortolano, 2000; NADBank, 2012). Given this arrangement, besides improving environmental infrastructure in the border area, NADBank is interested in instilling and maintaining the financial discipline and viability of the projects it funds. This entails that NADBank could only provide loans to projects with a demonstrable and reasonable assurance of repayment and could not use its paid-in capital to provide grants.

During its first years of operation, these conditions made it difficult for Mexican and some US border communities to access the funds necessary to implement environmental projects. Soon after its establishment, prospective borrowers and ENGOs began to express frustration at the rigid financial requirements of NADBank loans (Leising, 2000). For most of these actors, the interest rates set by NADBank were too high, and as a result, few loans were requested. What is more, even when some projects successfully passed BECC review, they did not qualify for NADBank financing (Logsdon and Husted, 2000, p. 378). The condition on financial viability of the projects thus became an obstacle to the accomplishment of the main objective of NADBank, which is enhancing the environment of the US-Mexico border area.

The NADBank’s trivial record in financing environmental projects supported the view that these financial exigencies precluded the institution from accomplishing its main task. In its first two years of operation, NADBank only approved two loans, for an aggregate value of USD \$1.9 million (Gantz, 1996, p. 1048). By 2001, it had only made seven loans for an approximate total value of \$11 million –or approximately one loan per year (Lehman, 2001, p. 8). In light of this poor record, ENGOs and border residents argued that despite its large financial capacity, NADBank was failing to fund the construction of much needed environmental infrastructure.



Consequently, they began to demand to NADBank the provision of funds in the form of grants that could make projects financially viable (Kelly and Reed, 2003, p. 115). Nonetheless, the Bank per the Border Environment Cooperation Agreement was precluded from providing grants and, thus, its hands were tied.

#### THE SUPPLY OF NEW AND BETTER RULES BY REGIONAL INSTITUTIONS

The NADBank soon acknowledged its underperformance. It determined that the strict financial conditions set on proposed projects were constraining its ability to contribute to improving environmental conditions in the border area.<sup>85</sup> The Bank thus looked for other ways to provide the funding needed to complement the financial support provided to environmental projects. From the input of transnational actors, NADBank concluded that rather than focusing on raising the creditworthiness of potential borrowers, it needed to develop forms of co-financing and funding. In other words, NADBank required shifting its focus from making partial loans to contributing to secure funding for projects. To do this, it purposely took three actions: first, it broadly (re-) interpreted its mandate; second, it modified the regional rules to provide grants; and third, it expanded its mandate and geographic jurisdiction.

In terms of the first, the BECA established that the purpose of the Bank was to provide financing, “as appropriate, for community [...] investment in support of the purposes” of NAFTA (NADBank, 2004, p. 9). Given the lack of an explicit definition of the terms ‘appropriate’ and ‘in support of the purposes of NAFTA’, the Bank suggested modifications to the BECA to the US and Mexican governments. Specifically, it called for more flexibility in the use of its paid-in capital to give grants for the development of environmental projects. To support its request, it argued that accomplishing its mandated task required the elaboration of financing packages that combined loans and grants (Lehman, 2001, p. 8). Otherwise, as Victor

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<sup>85</sup> Gerónimo Gutiérrez Fernández, NADBank’s Managing Director, claimed that the Bank was (and still is) an “underutilised tool” (ITAM, 2011, p. 10). Meanwhile Jorge C. Garcés, NADBank’s former Deputy Managing Director, claimed that when the NADBank started to operate US and Mexican local communities faced difficulties to borrow money for environmental projects simply “because our interest rates were too high or the communities didn’t have the resources to repay loans” (Texas Commission on Environmental Quality, 2004, p. 1).

Miramontes, former Managing Director of NADBank, stated “this system doesn’t work” (Mikulas, 1999, p. 514).

Second, NADBank affirmed that this change could be best achieved through the improvement of its operating efficiency and functional coordination with government organisations. Per the Agreement, NADBank was precluded from using its own capital to provide grants. Yet, the Bank concluded that other governmental institutions were under no such limitation (Gantz, 1996, p. 1040). Therefore, in 1997, NADBank proposed to the US Environmental Protection Agency (EPA) the establishment of the Border Environment Infrastructure Fund, which would administer EPA’s grant resources to help finance the construction of water and wastewater projects in the US-Mexico border area.<sup>86</sup> Under the proposed program, NADBank would find and submit prospective projects certified by the Border Environment Cooperation Commission to the EPA, which would approve them and disburse the funds to NADBank. In exchange, NADBank would oversee progress and compliance for EPA. The proposal of BEIF was politically controversial, because it meant in effect that a US federal agency would be partly funding projects in Mexico. To persuade EPA, NADBank claimed that without US investment in Mexican wastewater infrastructure, the shared water bodies would become extremely polluted, thus leading to the occurrence of health problems for people living on both sides of the border. In addition to this strategy, the Bank gathered increasing support for the Border Environment Infrastructure Fund between governmental and non-governmental actors in both countries. As a result of this pressure, the US Congress granted EPA funding for the creation and implementation of BEIF.

I argue that this change in the rules was especially significant. It meant that US-underwritten funds could be used to support the development of projects in Mexico as long as they had a benefit for the United States. The BEIF grants increased the impact of NADBank’s financing packages. By combining loans and grants, as of April 2013, NADBank has managed to take the

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<sup>86</sup> EPA recognised the urgent need for constructing and improving environmental infrastructure in the border area, especially on the Mexican side. However, it was reluctant to provide funds in the form of direct transfers to Mexico as it believed that the US Congress could have regarded such funds as provision of foreign aid by a domestic institution, which would have blocked the initiative (Fischhendler, 2005, p. 17).

total accumulated number of funded projects to 171 projects for a value of USD \$5.12 billion (NADBank, 2012, p. 1). Of those, 98 received a BEIF grant. While the average number of 10 projects funded per year may still appear to be small, this is far higher than in the initial years of NADBank when funding existed only in the form of market-based interest rates, and only one loan per year was made. Moreover, these figures also conceal the fact that NADBank altered the behaviour of governmental actors observed in the implementation and operation of previous funds, such as NAFEC. Finally, the BEIF has contributed to procure funding to environmental projects in the border area that would not have been funded, had the Bank not pushed for a change in the cross-border rules.

Third, NADBank acknowledged that the border area's most pressing environmental infrastructure needs were located on the Mexican side, and that more often than not, such needs extended beyond the border area defined by the La Paz Agreement as extending 100 kilometres north and south of the border, and which BECA had adopted. Transnational actors had urged national governments and regional institutions to expand the geographic jurisdiction of NADBank and the Border Environment Cooperation Commission to increase the capacities of both institutions to address the needs of the poorest communities located in the area (see Good Neighbor Environmental Board, 2002; US Department of State, 2002). In their view, years after its creation, NADBank's lending capacity remained "virtually untapped" (Texas Center for Policy Studies, 2000). Some of these actors claimed the portfolio of NADBank also had to be expanded, as its focus on clean water, wastewater and waste management projects, was too limited to address in full the causes of the environmental problems affecting the border area.

In response to these demands, NADBank began to pursue the expansion of both its geographic jurisdiction and core programs. The NADBank's Board of Directors submitted to the national governments a proposal to expand the programmes of the Bank as well as enlarge its geographic jurisdiction, to help it meet the wider scope of infrastructure needs of the border area (Garcés, 2004, cited in Texas Commission on Environmental Quality, 2004, p. 3). These proposed changes enjoyed broad public support and, importantly, had not been explicitly precluded by

BECA. Although the US and Mexican governments had some reservations about the proposal, they agreed to the changes. The BECC and NADBank were thus permitted to expand its area of operations on the Mexican side of the border and to expand the NADBank's programmes onto clean and renewable energy, energy efficiency, and air quality projects.<sup>87</sup> The BECA was amended in 2004 to incorporate said changes.

In the framework of Supranational Governance, these three changes represent an instance of rule innovation. Stone Sweet, Fligstein and Sandholtz argue that once a policy arena is constituted, transnational actors can "rewrite" the rules to enhance their efficiency in addressing existing issues or novel situations (2001, p. 19). Transnational actors do so by using existing rules and procedures and by demanding changes to the rules from regional institutions, national governments or both. In doing this, transnational actors are not just acting in a rational manner but behaving strategically, looking for the actors who can address and resolve the issues they are facing (2001, p. 17). In the case of the environmental common policy arena, in light of deficient governmental action, border communities (the transnational actors) called for changes in the Border Environmental Cooperation Agreement (the cross-border rules) to secure the financing of the environmental infrastructure required for the US-Mexico border area.

#### THE EFFECT ON GOVERNMENTAL ACTORS

In other instances, the national governments had been hesitant about and opposed to the use, implementation, interpretation and modification of cross-border rules by transnational actors and regional institutions. Yet, in the case of NADBank, they were supportive of the actions of transnational actors and regional institutions towards the expansion and then consolidation of a common policy arena on environmental protection. I argue that this differing stance might have resulted from the perception of the US and Mexican governments on the

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<sup>87</sup> Some US policymakers asserted: "there is no doubt that that the area encompassed within the 100 kilometres from the border is the area with the most dire needs. [Thus,] infusing additional funds within 300 kilometres of the border on the Mexican side makes sense in helping build infrastructure and [...] eventually relieve some of the pressure on the US side of the border" (US Congress, 2003, p. 4466). However, others argued that "expanding the [NADBank's area of operations could] pit border communities against new cities like Los Angeles, Phoenix, Chihuahua and Monterrey" (Texas Center for Policy Studies, 2000). Therefore, it was agreed that NADBank's area of operations would be extended on the Mexican side, but not on the US one.

nature and powers of NADBank in comparison with other regional institutions, such as the Commission for Environmental Cooperation (CEC).

Compared to CEC, which is a larger institution with a broad mandate aimed at widening public participation on the protection and enhancement of the environment throughout North America, NADBank is a much smaller institution with a narrower mandate in a correspondingly limited jurisdiction. Thus, the former might have appeared to the national governments as an already large institution that could potentially grow larger, and thus impinge on their sovereignty (Markell, 2004; see also Pastor, 1993, Patton, 1994). However, NADBank probably appeared to the US and Mexican governments as a small institution which merely financed projects already evaluated and sanctioned by BECC –a managerial bilateral institution in which governments have a prominent position. In the view of the governments, NADBank might have better accommodated the concurrent interests of furthering trade liberalisation, protecting the border environment and preserving sovereignty and, therefore, they might have found little reason to restrict its actions (Mumme, 1995; Sánchez Rodríguez, 2002).

In sum, in less than six years after its creation, NADBank and BECC had put forward a proposal to modify their founding charter, in order to broaden their financing activities and jurisdiction. With these modifications, the regional institutions would be able to finance projects further into Mexico, and permit below-market rate loans and grants to be used for projects on either side of the border. These modifications, which substantially altered the terms of the original bargain negotiated between the US and Mexican governments, were expected to increase the ability of the regional institutions to fulfil its mission and contribute to improve the environment in the border area. I argue that these changes in the intergovernmental bargain, resulting from the demands of transnational actors and the action of regional institutions to respond to such demands, demonstrate that the common policy arena has expanded and consolidated. They also demonstrate that the rules have been used frequently, thus suggesting that the arena is institutionalised.

## 6.5. THE INSTITUTIONALISATION OF THE COMMON POLICY ARENA

The establishment of NAAEC and BECA, and the resulting creation of CEC, BECC and NADBank, are institutional innovations in the context of environmental protection in North America. Until their implementation, no comparable agreement or institution had operated at the regional level on these issues. Their creation and operation filled a gap in the conservation, protection and enhancement of the regional environment. Throughout almost twenty years of operation, the three institutions have contributed to addressing the concerns of individuals, non-governmental organisations and border communities related to the implementation of NAFTA. Despite their newness in the context of environmental protection, the three institutions have been responsive to the demands of such stakeholders and facilitated the participation of the North American public in the use, development and improvement of cross-border rules.<sup>88</sup>

The cases analysed in this chapter have highlighted the entrepreneurial nature of the institutions set in place by the trilateral and bilateral agreements –i.e. CEC, BECC and NADBank. Their actions demonstrate a significant change from the rigid and reactive institutions that characterised the North American environmental policy framework before the implementation of NAFTA and NAAEC. So far, the three institutions have demonstrated a comparable entrepreneurialism, going beyond their mandates in order to appropriately fulfil their overall responsibilities and respond to the demand of transnational actors. The three institutions have worked to expand their jurisdiction and mandate, transforming themselves into the most important regional organisations on environmental protection in North America. Over twenty years of existence, they have even surpassed in importance long-standing institutions such as the IBWC. The dynamic performance of these regional institutions has resulted in the expansion of their jurisdiction and mandates. Their work, therefore, has consolidated the common policy arena that the national governments created and the transnational actors expanded.

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<sup>88</sup> Individuals, non-governmental organisations and border communities are commonly referred to in official documents as stakeholders. To maintain consistency in the use of concepts throughout the thesis, I favour the term transnational actors.

The CEC, BECC and NADBank are not supranational institutions and consequently none of them possesses ample powers, autonomy or human or material resources to push for the use, development and improvement of these rules. However, they have been venturesome in expanding their competences by interpreting their mandates broadly, at times even expanding their scope, beyond the provisions stipulated in their corresponding founding agreements. Hence, the actions of transnational actors in conjunction with the actions of the regional institutions have contributed to making this policy arena increasingly complex. They have also significantly increased the degree of policy interdependence among the three countries. As mentioned, this outcome –in which policy arenas emerge or evolve, and are increasingly structured by regional rules, procedures and activities of regional organisations– has been identified by scholars in other contexts as institutionalisation (Stone Sweet, et al., 2001, p. 3).

In this thesis, I argue that institutionalisation is the degree of policy interdependence in a given common policy arena. The concept of institutionalisation raises the questions of whether and with what intensity the rules set in place are being used. In this aspect, I argue that transnational actors in the North American countries have used the various rules laid out in both agreements to ensure continuous improvement in the environmental protection afforded by each country. Although the national governments of the US, Mexico and Canada did not expect significant engagement of transnational actors with these agreements, the transnational actors used them as access points to increase their participation in the conservation, protection and enhancement of the regional environment.

For instance, the mechanisms created by NAAEC contributed to improving the enforcement of environmental laws in the three countries and to the incorporation of individuals and non-governmental organisations, including some from other national jurisdictions, in ensuring the enforcement of domestic environmental laws. Furthermore, if actions contravening domestic environmental laws take place, the agreement allows for the creation of an independent arbitral panel of experts with the authority to determine whether legislation has been enforced appropriately. The outcome of these mechanisms can even be the application of trade sanctions

if a country is found in violation of domestic laws, and thus, cross-border rules. While this is probably one of the most important provisions of these agreements, there are still other 36 articles in the NAAEC covering a range of topics, thus giving the CLC, “the authority to address almost any environmental issue that might arise in the continent” (Knox and Markell, 2003, p. 11).

Yet, as argued in this thesis, regional rules are insignificant when actors do not make extensive use of them. A common policy arena may be created by intergovernmental agreements and yet not expand and consolidate due to the lack of transnational activity within it. In the case of the policy arena on the environment, transnational actors did significantly engage with the regional rules. Apart from the Cozumel case analysed in this chapter, another 80 citizen submissions were filed with the Commission for Environmental Cooperation between 1994 and 2012. Submitters used the mechanisms created by NAAEC to prompt change in governmental policies or practices, which otherwise would likely not have taken place. The filing of these citizen submissions and, in some cases, the creation of a follow-up factual record, generally resulted in either a modest or significant domestic political gain for submitters –modest meaning “formal advancement of the cause onto the government’s agenda and significant [meaning] actual policy changes” (Graubart, 2008, p. 124). As a result of a better understanding of its mandate and capacities, CEC has made changes to its public involvement and engagement channels, resulting in increased accessibility for transnational actors to regional rules.<sup>89</sup>

Therefore, despite being often overlooked in the literature in favour of national governments and regional institutions, the actions of transnational actors have indeed contributed to the expansion of the policy arena. Transnational actors have actively looked for changes in the rules and procedures established by this agreement as well as the parallel agreement, BECA. The result of these demands was the creation of the North American Fund for Environmental Cooperation (NAFEC) and the Border Environmental Infrastructure Fund (BEIF), neither of

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<sup>89</sup> For instance, CEC has made it possible for transnational actors to scrutinise governmental behaviour pre-dating the implementation of NAAEC to expose continuing and current failures to enforce domestic environmental laws –an interpretation of the agreement’s provisions that national governments did not anticipate or support.



which had been mandated by their corresponding agreement. Although these innovations had received limited support from the national governments, they were intensely used by transnational actors.<sup>90</sup> As noted in previous chapters, there is no precise number or threshold of rules at which a common policy arena can be said to be institutionalised. In North America, however, we have witnessed the transition from a lack of any regional rules on joint environmental protection and enhancement to one in which rules are used hundreds of times a year by transnational actors. This, I submit is an important case of institutionalisation.

## 6.6. CONCLUSIONS

This chapter has described the institutional framework on environmental cooperation that existed in North America prior to the implementation of NAFTA and has explained that bilateral collaboration on environmental issues in North America goes back to the beginning of the twentieth century. The chapter has shown how it was not until 1994 that a common policy arena on environmental protection in North America was created by the governments of Canada, Mexico and the United States through the entering of NAFTA's side and parallel agreements, NAAEC and BECA. The argument advanced is that transnational actors expanded this common policy arena through the use, interpretation and demand for modification of the provisions of these agreements, while the regional institutions –CEC, BECC and NADBank– consolidated it, through the supply of new and better regional rules.

Some scholars argued that the governmental decision to oppose the creation of strong regional agreements and institutions had prevented the emergence of innovative mechanisms to protect, not to say enhance, the North American environment. Likewise, a number of non-governmental groups in the three countries argued that the implementation of NAFTA would result in a rapid

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<sup>90</sup> During the eight years of operation of NAFEC, the Commission for Environmental Cooperation received nearly 3,000 applications from all over North America and awarded almost 200 grants for a value of more than of USD \$9 million (Carpentier, 2009, p. 3). Meanwhile, the BEIF contributed to take the number of projects funded by NADBank from an average of one loan per year to an accumulated of 171 projects funded for a value of USD \$5.12 billion as of 2013. Even if only a small number of them are ultimately funded, in average, the BEIF still receives 200 eligible applications per year (GNEB, 2010, p. 9; BECC/NADBank, 2010, pp. 8-9). This shows significant engagement by transnational actors with the rules created by the national governments and modified by regional institutions. Therefore, these numbers reflect the existence of regional rules and, more importantly, the intense use and interpretation of such rules.

degradation of the environment, especially in the US-Mexico border region, and the marginalisation of the public who had demanded the maintenance or strengthening of environmental regulation across the three countries. Yet, this chapter demonstrated that, instead, transnational actors and regional institutions have played important roles in expanding and consolidating the common policy arena on environmental protection.

The engagement of transnational actors with the cross-border rules, coupled with an entrepreneurial attitude of their institutions, CEC, BECC and NADBank, have contributed to the development of the arena in ways in which the previously rigid and passive bilateral cooperation mechanisms and institutions could not. Building on existing rules, these institutions have advanced their capacities, sometimes by-passing their mandates and putting themselves at odds with governmental actors, in order to deliver the policy outcomes that transnational actors have demanded. To illustrate these actions, in this chapter I discussed three of these initiatives:

- 1) NAAEC rules on enforcement of and compliance with domestic environmental laws through the citizen submission procedure;
- 2) The promotion of public participation in the protection and enhancement of the environment through the establishment of a North American Fund for Environmental Cooperation, which had not been instructed by the Parties to NAAEC; and,
- 3) The provision and facilitation of resources for environmental projects by the North American Development Bank, which furthered the objectives and provisions of its founding agreement, BECA.

Throughout this chapter, I have argued that the occurrence of these developments resulted from an active demand of transnational actors and a flexible approach of the institutions towards the provisions, goals and objectives of NAAEC and BECA. Stone Sweet, Fligstein and Sandholtz claim that policy “spaces rarely [...] institutionalise without a concomitant development of organisations” (2001, p. 19). I argue that even when most of these initiatives were not necessarily promoted, mandated or allowed by the agreements, transnational actors engaged

with them to test the limits of the new rules, while the institutions pushed for changes that better enabled them to fulfil their overall objectives and missions. In doing so, both transnational actors and regional institutions furthered the policy interdependence between the US, Canada and Mexico. Indeed, the actions of transnational actors, as well as the environmental regional institutions, suggest that the integration process in North America is indeed more complex and extensive than generally acknowledged, and that developments over the last twenty years indicate that we have seen the institutionalisation of this common policy arena.

# CHAPTER 7:

## CASE STUDY: THE COMMON POLICY ARENA ON LABOUR PROTECTION

## 7. CASE STUDY: THE COMMON POLICY ARENA ON LABOUR COOPERATION

### 7.1. INTRODUCTION

In this chapter, I analyse the emergence and development of the policy arena on labour cooperation in North America. Firstly, I describe the non-existence of a structured framework for cooperation on the protection and enhancement of labour rights at the regional level before the implementation of the North American Agreement on Labor Cooperation (NAALC) in 1994. I also describe how cooperation mechanisms bringing together public, private and social sectors only existed at the international level at the time –mainly in the framework of the International Labour Organization (ILO).<sup>91</sup> I explain that, given the focus of ILO on the creation of international labour standards, its work was seen by transnational actors as somewhat ineffective and disconnected from the main socioeconomic concerns prevalent in the region and thus inadequate to deal with the labour issues that NAFTA would bring about. I also explain why and how the North American national governments regarded ILO and its work as a threat to their pre-eminence over domestic labour issues and the sovereignty of their countries, and therefore failed to support its work and involvement in labour issues in North America.

Secondly, I describe the creation of the common policy arena. I argue that such an arena differed from the existing international legal framework structured by ILO. I also argue that national governments created it primarily to advance their national interests on the negotiation and entering into force of the main text of NAFTA and secondarily to address the concerns of trade unions and labour organisations on the effects of its implementation over labour laws and standards. I also argue that the structure of the specialised regional and supporting national institutions was intended to hinder (rather than foster) the engagement of transnational actors with the rules set forth in NAALC and thus the arena as a whole.

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<sup>91</sup> The International Labour Organization is the agency of the United Nations specialised in the promotion of workers' rights, the enhancement of social and labour protections and the fostering of cooperation on work-related issues. Its main aims are the determination, defence and advancement of international labour standards and the development of a 'decent work agenda' (ILO, 2013).

Thirdly, I explore whether this policy arena has expanded and been consolidated. In this respect, a number of scholars and analysts maintain that the Commission for Labor Cooperation (CLC) has not accomplished its goal of ensuring the effective enforcement of domestic labour laws in North America and criticise its shortcomings in responding to the demands of transnational actors. Instead, I advance the claim that transnational actors –including civil society groups and labour unions– have indeed used the existing regional rules to promote and push for policy outcomes in the domestic realm. I then argue that the arena has indeed expanded as a result of transnational activity, but not consolidated. In this respect, I contend that constituting bodies of the CLC have been proactive to different degrees in delivering the policy changes that transnational actors demanded. Some of the bodies of the institution, mainly the Secretariat, have been proactive in responding to these demands. However, due to the limitations that national governments deliberately placed upon them, these bodies face constraints in terms of their ability to address labour issues. In contrast, other bodies of the Commission for Labor Cooperation, namely the Council and the National Administrative Offices, have not only been reluctant to deliver these changes, but have actively opposed them. In light of these result, I thus argue that the CLC as a whole has failed to deliver the changes to the rules that transnational actors have demanded.

I conclude by arguing that the arena has experienced a low degree of institutionalisation. While national governments set cross-border rules for the protection of labour rights and the maintenance of labour standards in North America, and transnational actors have used them to address labour issues in the three countries, such rules have not been improved or expanded due to the constraints deliberately placed on regional institutions to deliver them. As a result of these constraints, transnational actors and regional institutions have only limitedly furthered the policy interdependence between the US, Canada and Mexico. I briefly discuss the relevance of these findings to the study of North American integration.

#### 7.1.1. BACKGROUND: LABOUR COOPERATION IN NORTH AMERICA BEFORE NAFTA AND NAALC

As noted in Chapter 5, cooperation between Canada, Mexico and the United States on labour issues was very limited before the implementation of NAFTA and NAALC in 1994. Prior to these treaties, exchanges between the three countries on these issues only occurred in the form of intermittent diplomatic contacts conducted in the context of larger multilateral arrangements, such as the International Labour Organization. Furthermore, even these limited exchanges were commonly influenced by the context of the larger bilateral diplomatic relations between their countries. Likewise, contacts between US, Canadian and Mexican trade unions, workers' rights groups and other non-governmental organisations were very limited.<sup>92</sup> Consultative or cooperative activities between North American unions were constrained to two contexts: meetings held between high-level union leaders, which were usually restricted to the drafting and publication of resolutions of support without much follow up and sporadic contacts between local unions, mainly aimed at helping Mexican workers with their labour rights demands (Compa, 2001, p. 459).

Such a trend of limited, conditioned cooperation or no cooperation at all between the North American countries on labour issues prevailed until the 1990s. Therefore, prior to the implementation of NAALC and the establishment of the CLC, the only other recourse available to non-state actors in North America to address issues related to the promotion and protection of labour rights and standards beyond domestic institutions was the mediation of the International Labour Organization. It will thus be useful to discuss briefly the structure, objectives and work of ILO in order to explain how the nature and agenda of this institution shaped the preferences and attitudes of the North American national governments towards the later negotiation of NAALC and the establishment of the regional institution on labour issues, the CLC.

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<sup>92</sup> I use the British English term 'trade union' and the US and Canadian English term 'labour union' interchangeably.

The ILO is dedicated to preventing the exploitation of workers, as well as improving their working and living conditions throughout the world. In accordance with these objectives and consistent with its international scope, much of the ILO's work focuses on the definition, setting and supervision of the application of international labour standards. It does so through the promotion of international cooperation in the form of the negotiation, adoption and ratification of Conventions.<sup>93</sup>

Despite the size and breadth of its objectives and work, the ILO possesses limited financial and organisational resources to promote and supervise the actual upholding of international labour standards. Therefore, the organisation relies heavily on national governments to ensure the implementation and upholding of its Conventions. This takes the form of reports submitted by the governments themselves that detail the measures taken towards the application of the Conventions they have ratified. In practice, this means that the basis of the system for overseeing compliance with international labour standards is self-supervision. Such an approach towards the protection of labour rights and standards thus requires the involvement of other state and non-state actors in order to denounce cases of non-compliance. In these cases, contentious proceedings can be initiated against the state for a failure to uphold its commitments under a certain Convention it ratified.<sup>94</sup> However, the highly complex and lengthy nature of this investigative procedure has meant that this route has never actually been fully pursued. Moreover, given that subscription to, and compliance with, Conventions is voluntary, there are no further alternatives to force compliance upon disobliging states (McKennirey, 1996, p. 187).

The effectiveness of this approach to the adoption, implementation and supervision of international labour rights and standards is thus limited. However, in the North American context it is even more so due to the irregular record of support of Canada, Mexico and the

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<sup>93</sup> To this day, the ILO has adopted 189 conventions and has identified eight of these as 'core labour standards'—i.e. the fundamental labour rights that all member countries should respect regardless of their level of economic development.

<sup>94</sup> Under certain circumstances, these proceedings can become a formal complaint and thus a legally contentious matter that may be taken to the International Court of Justice for arbitration as a measure of last resort.



United States for the work of the International Labour Organization. I will now explore the relations between these countries and ILO, how those relations shaped the interests of the national governments in the establishment of a regional organisation focused on labour issues, and most importantly, how they shaped the proposal, negotiation and entering of NAALC and the establishment of the Commission for Labor Cooperation.

#### THE RELATIONS BETWEEN THE NORTH AMERICAN GOVERNMENTS AND THE ILO

Since its founding in 1919, the International Labour Organization has promoted closer cooperation with governments and organisations in an attempt at providing impetus for the development of its agenda and programmes. However, to this day, none of the North American governments showed or has shown much support for the work of the organisation.

It can be claimed that Canada has had an ambivalent relation with the ILO. On the one hand, the country has historically supported the organisation and its work. Canada is one of the founding members of the organisation and its representatives have had a positive role in the drafting and voting of ILO Conventions. On the other hand, Canada has been generally critical and unsupportive of the work of the ILO in terms of the ratification or implementation of such Conventions. To this day, Canada adheres to its long-standing practice of ratifying and implementing Conventions only if all federal, provincial and territorial jurisdictions concur and undertake to implement them in their respective jurisdictions (HRSD, 2011). As a result of this practice, the country's record at ratifying these instruments is "extremely poor" (Canadian Foundation for Labour Rights, 2012).<sup>95</sup>

The reason for such ambivalence appears to be the country's disbelief in international standards. In the view of Canadian policy analysts, the ILO's approach to the setting of international labour rights and standards is a unilateral application of other states' standards to the Canadian context. In the view of the Canadian government, these instruments open "Canada to the unilateral actions of others, thereby jeopardising our prosperity and our ability to sustain

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<sup>95</sup> As of October 2013, Canada has only ratified 26 out of the 189 existing Conventions, and of the eight core labour standards, the country has only ratified six (ILO, 2013).

standards appropriate to Canadian circumstances” (Government of Canada, 1995, cited in Schmitz and McDonald, 1996). Such scepticism of the work of the ILO may be reinforced by the actions of Canada’s neighbour and largest trading partner, the United States, which is often seen as denouncing a lack of compliance with international labour standards in other countries while continuously refusing to open itself to multilateral accountability (Alston, 1993, cited in Schmitz and McDonald, 1996). Therefore, the setting of international labour standards, and by extension the work of ILO, is seen by some as an instrument of US foreign policy that Canada prefers to avoid.<sup>96</sup> These circumstances have thus resulted in Canada failing to adopt most of the ILO Conventions and its core labour standards. In sum, even if Canada supports the ILO in principle, in practice it rarely supports its work.

For its part, the US has also taken an ambivalent stance overall toward ILO. On the one hand, the country has historically supported the organisation. The first International Labor Conference took place in Washington, DC; it was under US leadership that the ILO was awarded the Nobel Peace Prize for its contribution to the improvement of labour conditions throughout the world, and the country remains the largest financial contributor to the organisation (ILO, 2012). In the view of the US Department of State, these activities demonstrate the strong commitment of the US towards the ILO (Brimmer, 2010). On the other hand, the US has historically had an uneasy relationship with the ILO. Despite its purportedly strong commitment to the organisation, the US is the only country to have ever withdrawn from the organisation –only to return to it three years later.<sup>97</sup> Furthermore, the US government is formally barred from ratifying any ILO Convention that contravenes or conflicts with prior federal or state labour legislation. For this reason, the US, like Canada, has failed to ratify most ILO Conventions beyond those that are largely technical (Elliott and Freeman, 2003, p. 107).<sup>98</sup>

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<sup>96</sup> Canadian policymakers have also asserted that they consider the work of ILO to be “more symbolic than anything else” due to the impossibility of enforcing recommendations (Weston, 1995, cited in Schmitz and McDonald, 1996).

<sup>97</sup> In 1977, the US withdrew from the ILO, claiming that the organisation had become “overly politicised, ineffective and unwilling to distinguish between ‘genuine’ unions and ‘government-run sham organisations’ in the old Soviet bloc” (Elliott and Freeman, 2003, p. 95). Its withdrawal resulted in the loss of contributions equivalent to a quarter of the ILO budget (Bangasser, 2000, p. 13).

<sup>98</sup> Out of the 189 ILO conventions the US has only ratified 14, and of the eight core labour standards, it has ratified only two (ILO Washington, 2012).

Gross argues that the US has been reluctant to ratify these instruments out of concern that complaints in an international organisation such as ILO, for domestic violations of labour rights might derive in legal constraints for the country –both domestically and internationally– or criticisms on labour conditions, practices or standards prevalent in the United States (1999; 2010). Although the strong formal and financial commitment of the US and its hesitant support towards the ILO’s work might appear as conflicting, Candland argues that this conduct is deliberate, inasmuch as it allows the US to advance and establish international labour standards likely to be used for foreign policy objectives, while the country maintains the protection of those same standards within its territory as a domestic issue (2009, p. 172). In conclusion, the behaviour of the US government casts doubt on its actual commitment towards the ILO and the organisation’s work.

Finally, Mexico’s relationship with the ILO has been just as ambivalent as those between its neighbours and the organisation. On the one hand, the organisation maintains that Mexico has played a protagonist role in the development of the organisation and that it has continuously supported and directly influenced its approach towards the protection of labour rights worldwide (OIT México y Cuba, 2012). However, such purported contribution contrasts with the historic tension between the Mexican government and the ILO and the limited support of Mexico to the organisation.<sup>99</sup>

Such an ambivalent attitude towards ILO appears to be grounded in the interest of the Mexican government in maintaining its corporatist relations with official trade unions. Given that trade unions have been historically connected to the functioning and perpetuation of the political system, until the 1990s, labour-related matters were considered an ‘affair of state’ (De La Garza Toledo, 1994, p. 1). Therefore, the participation of Mexico in multilateral agreements or

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<sup>99</sup> Out of the eight core labour standards, Mexico has only ratified six, and out of the existing 189 Conventions, Mexico has only ratified 78. Even if the latter figure is higher than the accumulate number of Conventions signed by the US and Canada, it is still less than half of the existing Conventions. What is more, out of the 78 Conventions it has ratified, Mexico has denounced eight. This makes it, along with Canada, the North American country that has denounced the most ILO Conventions. The US and Canada have ratified 14 and 26 Conventions, correspondingly. These figures exclude Conventions that the countries later denounced. To this day, Canada has denounced eight out of the 34 Conventions it has ratified. So far, the US is the only North American country that has not denounced any of the 14 Conventions it has ratified (ILO, 2013).

organisations on labour issues was seen as a risk to the maintenance of the corporatist model on which domestic industrial relations were grounded, especially if these mechanisms possessed extensive enforcement powers or pressure capacities. For this reason, the country did not engage significantly with the organisation.<sup>100</sup>

#### THE ILO AND THE SHAPING OF THE NATIONAL GOVERNMENTS' PREFERENCES IN THE NEGOTIATION OF NAALC

As discussed above, the North American governments have had ambivalent relations with ILO. While the three countries have supported the organisation, none of them has significantly supported its work on the establishment and upholding of international labour standards through the ratification of its Conventions. All these countries were concerned, even if for different reasons, that the involvement of an international or multilateral organisation in domestic labour matters would impinge on or limit their political sovereignty.

The relations of these countries with the ILO constituted their only experiences with the transnational protection and upholding of labour rights. I thus argue that these relations set a precedent for the determination of the positions of their governments towards the implementation of the North American Agreement on Labour Cooperation (NAALC) and the creation of the Commission for Labor Cooperation (CLC). These relations set the background for the proposal and negotiation of a regional labour agreement. It follows that even before the proposal of NAALC, the national governments had already shaped their preferences on the establishment of cross-border rules on labour protection and a regional organisation charged with overseeing the implementation and upholding of labour laws and standards.

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<sup>100</sup> It is likely that Mexico did not object to joining the ILO due to the organisation's limited capacity to supervise the implementation of its Conventions and international labour standards. In fact there is a widespread perception among the Mexican public and non-governmental organisations that domestic labour laws and practices have not significantly changed as a result of the country's participation in ILO (see Reforma, 2007, cited on Dossier Político, 2012).

The US government strongly opposed the idea of delegating powers over labour issues to an international commission (Bierman and Gely, 1995, p. 535).<sup>101</sup> In the negotiation of NAFTA, the US indicated its interest in moving away from the creation of general labour standards, and thus ILO's convention-based system, towards the implementation of a softer complaint-based regime aimed at addressing specific labour disputes and issues (Alston, 2005, p. 7). Similarly, the Mexican government dismissed the option of entering a side agreement that would interfere in any way with its domestic labour policies (Bierman and Gely, 1995, p. 535). In its view, any agreement that could potentially alter the longstanding institutional relationship existing between unions, the ruling party and business was interference in Mexican domestic affairs (Wheeler, 1997, p. 243). Mexico thus rejected the idea of entering an agreement that could sanction national governments for persistent domestic violations of labour rights or standards.<sup>102</sup> Finally, Canada also opposed the implementation of a strong regional agreement and organisation on labour protection on two grounds. First, the federal government argued that it had limited competence to regulate labour standards and practices given that jurisdiction over labour issues lies in the hands of provincial governments. Second, Canada believed that the US could use a regional labour agreement with strong enforcement provisions as a protectionist measure against Canadian competition (Singh, 2002).

I argue that these positions carried on to the discussion of NAALC and shaped the way in which the agreement and its managing Commission were structured. In fact, none of the stances would significantly change as a result of the intergovernmental discussions and negotiations of NAALC. On this basis, all countries dismissed the prospect of creating a regional organisation that would resemble the ILO at the North American level. In the context of my theoretical

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<sup>101</sup> It is important to note that this assertion does not entail that the US initially opposed the establishment of a trilateral labour commission with strong investigative and enforcement powers. The text only entails that the US government was not inclined to pool or delegate sovereign decision-making powers over labour matters (e.g. legislation and adjudication) in an international commission. In other words, the US was in favour of establishing a strong intergovernmental institution, but not a supranational one.

<sup>102</sup> There are conflicting accounts regarding which countries opposed the establishment of sanctions for violations of fundamental labour rights. Bolle claims that it was only Mexico who opposed such sanctions (2001, p. 12), while Weiss claims that it was mainly Canada (1999, p. 191). Dombois (2002, p. 20), Bognanno and Lu (2003, p. 371) as well as Keresztesi (2004, p. 210) claim that both Canada and Mexico opposed these sanctions, as they were not eager to expose themselves to external pressures resulting from labour disputes. Besunsán and Middlebrook agree with this claim, but add that it was especially Mexico which opposed these sanctions (2012, p. 76). Finally, Herzstein claims that the three countries opposed the establishment of these measures (1995, p. 130).

framework, these positions shaped the national preferences of the North American governments and defined the bargaining objectives of the three countries concerning the implementation of a regional agreement and the creation of a regional institution on labour.

#### 7.1.2. THE EFFECTS OF THE NON-EXISTENCE OF THE COMMON POLICY ARENA ON LABOUR COOPERATION

The occurrence of minimal cooperation on labour issues would probably have no significant impact in countries with little to no economic interdependence. However, since the 1960s, the US, Canada and Mexico had begun to experience the linking of their domestic chains of production –a phenomenon that could potentially affect the upholding and advancement of labour rights and standards in their corresponding territories. I argue that in the context of increasing economic interaction, the non-existence of a common policy arena on labour issues had various adverse effects. Firstly, it created social and political tension between the national governments and the public. In the face of increasing regional and international (economic) interdependence, national governments were determined to maintain policy- and decision-making on labour issues as domestic affairs, while the public and labour unions demanded the management and regulation of such interdependence, preferably through domestic political institutions (Teague, 2003, p. 442). Secondly, in cases where the promotion, defence and upholding of labour rights and standards could not be accomplished through the action of domestic authorities, it prevented the intercession of other legal or institutional mechanisms to examine and address these issues. Thirdly, it nurtured distrust and alienation among governments, trade unions and other labour actors towards their counterparts in other countries (Kay, 2011, p. 3).

The non-existence of such arena had thus negative effects that were likely to be exacerbated by the implementation of NAFTA. Nonetheless, national governments, civil society groups and non-governmental labour organisations in the three countries were dissatisfied with the only international institution already in place for the establishment and advancement of labour rights and standards. As described above, the national governments were keen to move away from the

ILO framework, which they considered to be impinging in their sovereignty, and onto a regional framework more consistent with their individual national interests. On the other hand, labour groups questioned the ability of the ILO to enforce its international standards due to the lack of sanctions for non-complying states. Due to this shortcoming, the ILO was out of favour among North American trade unions and worker groups, especially those in the US.

Therefore, one of the most important debates that would surround the proposition and eventual negotiation of NAALC, alongside that of NAFTA, would be on whether to establish an organisation with strong powers to enhance the protection and advancement of labour rights and standards in the region –as opposed to the ‘soft’ powers of the ILO. Since the 1980s, some proposals had been made on the prospects of implementing trade agreements that explicitly tied the reaping of trade benefits to the observance and protection of labour rights. Yet, it was only with NAFTA that the negotiation and implementation of a free trade agreement was tied to the concurrent adoption of a transnational agreement on labour laws, practices and standards. I argue that such agreement created a common policy arena on labour issues in North America. The demand for such agreement came from transnational actors in the three countries, and the national governments delivered it in the pursuance of their national interests.

## 7.2. THE TRANSNATIONAL DEMAND FOR NAALC

A number of trade unions and other labour-related non-governmental organisations argued that the rise in cross-border exchanges as well as the increase in trade and investment flows between the three countries expected from the implementation of NAFTA, would lead to changes in production methods and consequently, labour practices and standards (see McGuinness, 1994; Adams and Singh, 1997; Griffin, 1997). On this basis, some trade unions opposed the implementation of any kind of agreement between the three countries, claiming that it would constrain their ability to promote and protect the rights of workers<sup>103</sup>. Nonetheless,

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<sup>103</sup> US trade unions such the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO and its then-affiliated trade unions, including the Amalgamated Clothing and Textile Workers Union (ACTWU), the International Brotherhood of Teamsters (IBT), International Union of Electrical Workers (IUEW), United Auto Workers (UAW) and United Food and Commercial Workers (UFCW), opposed the NAFTA since the beginning. For instance, citing one of its economists’ testimony before the US International Trade Commission, the AFL-CIO

some others engaged with the NAFTA negotiations, calling for the creation of a regional framework for the protection, strengthening and advancement of labour rights and standards. They deemed it necessary to establish a regional legal framework that would allow workers to cooperate on issues of mutual interest related to the protection of their rights, the promotion of their welfare and the upholding of labour standards.

Likewise, a number of policy analysts, scholars and non-governmental organisations argued that the lack of regional channels for cooperation and discussion of labour issues could have a detrimental impact on workers' rights and hamper existing labour principles and standards throughout North America (see Castañeda Gutman and Heredia, 1992; Chomsky, 1993; Pastor, 1993; Compa, 1997a, 1997b, 1997c; Cook, 1994). In their view, the occurrence of regional integration offered opportunities for mutual economic gain for countries and their populations through the linking and expansion of their corresponding markets. However, bringing together markets also implied linking the incumbent countries' chains of production and therefore impinging on the regulation of labour markets –an issue that has traditionally been a sovereign domestic matter (Gitterman, 2003, p. 100). According to these analysts, scholars and organisations, the occurrence of regional integration could have detrimental effects on the welfare of citizens and affect the levels of social and labour protections afforded in their countries. Therefore, they argued that policymakers needed to address labour issues as part of any effort aimed at promoting regional integration (Gitterman, 2003, pp. 99-100; see also Sánchez Castañeda, 2011).

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maintained that in 16 years of operation of the Mexican Industrialization Program (BIP), or *Maquiladora* program, the value of the exports of [Mexican] exports to [the US] has *skyrocketed* from \$145 million in 1969 to \$5.5 billion in 1985. It is an understatement to say that our worst fears have been realised" (Anderson, 1987, cited in Kay, 2011, p. 55). Some decades later, citing research from the Economic Policy Institute (EPI), the AFL-CIO maintained that "20 years after NAFTA was passed [...] nearly 700,000 U.S. jobs have been lost or displaced [as a result of] *skyrocketing* US trade deficit with Mexico" (AFL-CIO, 2012). United Auto Workers (UAW) uses the same language when discussing the effects of the implementation of the free trade agreement: "Under NAFTA, US trade deficits with Canada and Mexico have *soared*. Many companies have shifted production to Mexico at the cost of hundreds of thousands of US jobs" (UAW, 2012). Some of these labour unions continue to oppose NAFTA, and consequently the NAALC. However, other "labour unions that featured grassroots activism, led by the United Electrical Radio (UE), the International Brotherhood of Teamsters (Teamsters) and the United Auto Workers (UAW) adopted an international strategy of opposition" (Graubart, 2008, p. 64) that eventually led them to get involved with the NAALC and its procedure for the protection of labour rights and standards.



These concerns varied from one country to another as well as from one organisation to another. However, the most common claims on the effects of NAFTA on labour laws and standards were that it would:

- Prompt the loss of US and Canadian jobs to Mexico as factories and firms moved from the former to the latter in search of cheaper labour (Nolan García, 2011, p. 93);
- Drive down US and Canadian wages in competitive wage pricing for investment (Housman and Orbuch, 1992, p. 727; Hufbauer and Schott, 1993, p. 11);
- Provide negative incentives to US and Canadian firms to relocate to Mexico where labour standards were purportedly lower and labour law enforcement negligible (Housman and Orbuch, 1992, p. 726); and,
- Prompt the loss of jobs in Mexico to the US and Canada, as Mexican factories and firms imported more industrial supplies and agricultural products from those countries, where markets and industries were highly protected and/or heavily subsidised (López Villafañe, 2004; Arroyo Picard, 2009).

All groups in all three countries expressed one or more of these concerns. Yet, the most vocal were those in the US and, in most instances, the concerns were directed at Mexico. Although most US labour unions were not against free trade, they opposed a free trade agreement that included Mexico (see Kay, 2011). According to Munro (1999) and Cowie (1997) this stance resulted from the perception that the increasing cross-border integration of the chains of production, had purportedly favoured Mexico and its maquiladora model.

US trade unions claimed that, aside from the economic incentives and the abundance of cheap labour, the maquiladora model appealed to US companies because it was built on the prevalence of precarious conditions for workers. In their view, given that maquiladoras generated a great influx of foreign investment, in cases of abuses by domestic and foreign companies, Mexico neglected or failed to uphold workers' rights, welfare and safety. The maquiladora model thus

attracted jobs and investment through the maintenance of a ‘cheap and submissive’ workforce (Crandall, 1994, p. 174). Such a model undermined labour laws, standards and practices as well as workers’ welfare and safety in the US through competition between US companies and Mexican maquiladoras.<sup>104</sup> For these reasons, in the US, more than in Canada or Mexico, some labour groups called for the national government to propose and negotiate a labour agreement.<sup>105</sup> To address these concerns and, more importantly, to secure the passage of NAFTA in the three national legislatures, the three national governments resolved to negotiate the North American Agreement on Labor Cooperation (NAALC).

### 7.3. THE CREATION OF THE COMMON POLICY ARENA

As mentioned above, the NAALC partly resulted from the transnational demand for a labour side agreement to NAFTA, and its negotiation and signing mirrored that of the North American Agreement on Environmental Cooperation. That is, a number of labour, social and non-governmental groups and organisations in the three countries demanded it, and the national governments of the three countries drafted, negotiated and passed it partly as a response to these demands as a means to secure the passing of the main text of NAFTA. However, the main rationale for the negotiation of a labour agreement followed that of the environmental one. The primary interest of the national governments in negotiating NAALC was still economic –i.e. securing the passing of NAFTA. Evaluations of the national positions on the proposed NAALC and declarations from government officials and other governmental sources from all the three countries support this assessment.

For the US under Clinton, the negotiation of a labour side agreement was required in order to secure ratification of NAFTA in Congress. Contrary to some accounts that emphasise the role of labour groups in securing the agreement, in fact most US trade unions did not favour NAFTA, with or without a side agreement on labour (Hufbauer and Schott, 2002, p. 48). Therefore, they

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<sup>104</sup> For a further analysis of how US trade unions framed the discourse about and discussion around the NAFTA see Cowie (1997).

<sup>105</sup> For instance, Finbow argues that “well-organised labour-funded political action committees swayed many in [the US] Congress to oppose NAFTA without concessions on labour” (2006, p. 59).

made little effort or refused to take part in the drafting or negotiation of the agreement (Knox, 2004, p. 385). This circumstance allowed the US Executive to propose and negotiate an agreement with Canada and Mexico that was only strong enough to fulfil the conditions of the NAFTA Implementation Act of 1993 set forth by the US Congress.<sup>106</sup> Although the demands for the protection and improvement of labour conditions in North America led to the proposal of the labour agreement, I argue that the US government only negotiated it as a necessary condition to ensure the attainment of NAFTA.<sup>107</sup>

Similarly, negotiating and securing a free trade agreement with the United States was of great importance to Mexico. President Salinas de Gortari promptly requested permission from the Mexican Congress to negotiate such agreement, arguing it was part of a strategy to boost investments, jobs and wages through the liberalisation of the market and engagement in international competition. Therefore, for Mexico, achieving a US-Mexico FTA was crucial, even if its negotiation and implementation would entail the revision of Mexico's labour system based on the allegiance of labour unions to the ruling party (see Santos Azuela, 1998, p. 197). Furthermore, the Salinas administration was pushing forward domestic labour-related reforms at the time. Thus, to achieve both ends, when the US proposed the implementation of a side agreement on labour, the Mexican government portrayed it as necessary to achieve the Mexico-US FTA, and later, NAFTA.

Finally, for Canada under the Mulroney administration the negotiation of the side agreement on labour cooperation was only significant inasmuch as it enabled the national government to secure the main text of NAFTA and curb opposition to the agreement from Canadian trade unions and labour groups, and more importantly, the Provincial governments.<sup>108</sup> Although

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<sup>106</sup> The Act required the entry into force of an agreement on labour cooperation as a condition for the passing and entering into force of NAFTA, but did not lay out the institutional framework that such agreement would establish or the specific labour principles, laws or standards that it would seek to uphold (see US GPO, 1993, pp. 107-108)

<sup>107</sup> Other authors also argue that the sole purpose of negotiating a side agreement on labour was to ensure passage of NAFTA (see Cameron and Tomlin, 2000, p. 201; Grimm, 1999; Clarkson, 2008).

<sup>108</sup> In early 1993, the national government called for the Provinces to get involved in the setting of the Canadian position in the NAALC negotiations, yet it quickly became doubtful about their response. The demands of the Provinces for 'joint responsibility' led to disagreements over the negotiations (Kukucha, 2008, p. 183). Discussing these disagreements, a high-ranking Canadian policy official asserted that "regardless of what the provinces may say

Canadian opposition to NAFTA on labour grounds was not significant enough to risk its passing in the Senate, the Canadian national government regarded it as a “political courtesy” to trade unions and labour-related groups that could potentially gain their support for the main agreement (Kukucha, 2008, p. 183). Even if the signing of NAALC was of little relevance and would have little impact in Canada, the participation of the country in the side agreements was still fundamental to secure the passing of NAFTA in the Senate. On this basis, I argue that the negotiation and implementation of NAALC was only of marginal interest for Canada.<sup>109</sup>

Furthermore, Bensunsán Areous (1994) argues that none of the three governments was actually interested in creating a framework for the protection and upholding of labour laws and standards through the implementation of NAALC. Yet, they regarded it as a requirement to secure the passage of NAFTA in their corresponding legislatures. On this basis, I argue that the main interest in negotiating and implementing the side agreement on labour was the same as the side agreement on the environment: achieving and implementing NAFTA. However, unlike the environmental agreement, the negotiation and implementation of a labour agreement had a precedent in the international arena. Due to the existence of ILO and the experience of the North American countries in dealing with it, the secondary interest of the national governments in the negotiation of NAALC was to maintain labour issues as a domestic affair and prevent the creation of a powerful ILO-like regional institution that could impinge on their sovereignty (Bierman and Gely, 1995, p. 535).

This secondary interest is reflected in the structure of the agreement and the powers of institution that manages it, inasmuch as it created a dilemma for both of them. The Commission for Labor Cooperation had to be, or at least appear to be, authoritative enough to gain the support of the legislatures, but be weak enough so it would not become the regional equivalent of ILO. I argue that the national governments resolved this dilemma in the following manner:

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these negotiations are... a ‘political’ courtesy [to the Provinces and the unions]. Let’s face it, the side deals are just not that significant” (Undisclosed name, cited in Kukucha, 2008, p. 183).

<sup>109</sup> In addition, in Canada, legislation and regulation on environmental matters is shared between the federal and provincial governments, while legislation and regulation of labour matters is mainly the responsibility of the Provinces. Therefore, it is likely that the national government focused on drafting and negotiating the environmental agreement for which it was mainly responsible, rather than on the labour agreement for which the Provinces bore the main responsibility and which they opposed.

watering down the provisions of the agreement, making access to rules more difficult (in comparison with the environmental agreement), and deliberately weakening the institution. Once they had agreed on these rules and the powers of the Commission of Labor Cooperation, as well as the obstacles that would be put in place for transnational actors to use both instruments, they signed and ratified NAALC, which finally entered into force along with the main agreement in 1994. By passing the agreement, they created the arena on labour cooperation. Again, in the framework of Liberal Intergovernmentalism, this represents an instance of intergovernmental bargaining, in which governmental actors set their preferences, achieved an agreement that reflects their common interests, and locked in their commitments through the creation of a regional institution, which is intended to function as a ‘passive set of rules’. In the following section, I analyse the cross-border rules that NAALC established before moving on to the obstacles that the governments placed upon transnational actors to prevent the use of such rules.

#### 7.3.1. THE CROSS-BORDER RULES OF THE COMMON POLICY ARENA

The aim of the NAALC is to enhance basic labour rights and improve working conditions and living standards for workers in Canada, the US and Mexico by ensuring the enforcement of existing and future domestic labour laws and standards. A significant part of the agreement is the establishment of 11 ‘Labour Principles’, which are general guidelines that the Parties are committed to promoting in order to protect and uphold labour laws and standards in North America. It is important to note that the Principles do not establish common minimum standards or new cross-border rules on labour protection, they are only commonalities found in the existing national legislations on labour issues. Its inclusion in NAALC is thus only a reiteration of the commonalities existing in the domestic laws regulating labour practices in the North American countries.

Instead, the most important rule of NAALC is the effective enforcement of domestic labour laws throughout North America. This means that national governments commit themselves to upholding their domestic labour laws rather than just maintaining them ‘on paper’. The NAALC

extends the use of this rule to all transnational actors, i.e. individuals, unions, employers and non-governmental organisations, to ensure that such domestic legislations are being effectively applied and upheld. This means that any transnational actor can contribute to upholding the Labour Principles, and labour laws and standards in general throughout North America. This is done through the denunciation of cases of non-compliance. Finally, the potential use of this rule appears to be wide-ranging, as any labour matter within the scope of the agreement might be discussed and examined by the national governments. Furthermore, given that having such a rule without the power to enforce it would be futile, the agreement provides for an evaluation procedure and an enforcement mechanism. This provision gives NAALC an element of enforceability through the establishment of an independent Evaluation Committee of Experts or/and an Arbitral Panel. This mechanism may include the setting of fines or trade sanctions in case one Party to the agreement persistently fails to fulfil its obligations.<sup>110</sup> This entire process is initiated by transnational actors through the Public Communications procedure, which I discuss below.

As previously argued, the incorporation of this enforcement mechanism in the text of NAALC partly resulted from civil society demands to ensure the effective enforcement of domestic labour laws. Yet, its objective, provisions and means of implementation were mostly defined according to the interests of the national governments. From the text of NAALC, it can be acknowledged that the mechanism is “a small and tentative step” by governments to address their civil societies’ concerns about the maintenance of labour standards, while maintaining control over the sovereign functioning of their national labour systems (McKinney, 2000, p. 49). In taking this step, the national governments attempted to reconcile two divergent objectives: achieving regional cooperation on labour matters and maintaining firm national control over such issues. It was on this basis that the governments defined (and constrained) the objectives,

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<sup>110</sup> The dispute resolution procedure is of great importance as it is the only port of access in the agreement for transnational actors. As such, it merits further analysis. Yet, in favour of clarity and coherence, I will continue with the description of NAALC and the regional institution responsible for its administration, the CLC, before returning to the analysis of its dispute system.

powers and structure of NAALC and the CLC. I will briefly discuss how is the CLC structured and how it operates under this rationale.

### 7.3.2. THE REGIONAL INSTITUTION AND ITS SUBSIDIARY BODIES

The Commission for Labor Cooperation is the regional institution that oversees the implementation of NAALC and promotes cooperation among the national governments to ensure and improve labour rights and standards in North America. Its organisational structure resembles those of other international or regional institutions. It is formed of three administrative bodies: the Council of Ministers, the Secretariat and the National Administrative Offices (NAOs).

The Council of Ministers is the managing body of the Commission and is made up of the labour ministers of Canada, the US and Mexico. It is in charge of setting policies and making decisions on labour issues in North America, promoting cooperative activities between the countries and overseeing the implementation of NAALC. Meanwhile, the Secretariat supports the Council and assists Parties with their cooperative activities. If required, it also provides support to the Evaluation Committees of Experts and Arbitral Panels that might be established by the Commission to investigate and resolve disputes between transnational actors and the national governments. The work of the Commission is also supported by the National Administrative Offices. These are offices established in each country to act as a liaison between the CLC's Secretariat, other NAOs, national and other governments' agencies and the public. Compa regards the NAOs as unique institutions, inasmuch as their work consists in dealing with labour issues outside the territory of the country in which they were based (1995, p. 159). However, I argue that the position of the NAOs vis-à-vis other constituting bodies of the Commission is problematic and ambiguous. Although they are nominally part of it, the activities of the NAOs are not aimed at supporting the Commission's work but rather easing and administrating the relation between this institution and their correspondent national government.

Finally, although the NAALC's preferred approach is the encouragement of cooperation, it also provides for individuals, trade unions and other labour or labour-related organisations to file complaints against any of the Parties for a failure to abide to their own laws and standards including the aforementioned labour principles. The bodies charged with the administration and examination of these complaints are the Evaluation Committees of Experts (ECEs) and the Arbitral Panels.<sup>111</sup> Given that the establishment of ECEs is only an intermediate and often omitted step in the setting up of an Arbitral Panel, in this thesis, I will only focus on the functioning of the latter, which is the stricter 'enforcement' body of the agreement. Arbitral Panels are composed of independent experts in labour matters. Their objective is to determine whether there has been a persistent pattern of failure by a Party to enforce its domestic laws. If such a pattern is found to exist, it lays out an action plan to resolve the issue. If the Party fails to implement this action plan, the Council might consider and determine the setting of a trade sanction aimed at inducing compliance of a Party with its domestic labour laws. Despite their nominally subordinate position, I argue that the NAOs and Arbitral Panels constitute the core of the Commission for Labor Cooperation. On the one hand, the National Administrative Offices control the access of other actors to the provisions of the agreement. In effect, the NAOs are representations of the national governments, which serve and respond only to the interests of such actors. Given that the Council only reviews those matters accepted by the NAOs, these offices are intermediaries between transnational actors and the regional institution. On the other hand, Arbitral Panels are the adjudicatory bodies that may enforce the agreement in conjunction with the Council. Nonetheless, Arbitral Panels still need the Council to implement any enforcement measure they might determine is needed. This arrangement gives national governments control over the review and enforcement process before and during its

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<sup>111</sup> The ECEs are non-adversarial, non-adjudicatory review panels made up of independent experts in labour matters that are convened to analyse 'patterns of practice' in the enforcement of domestic labour laws. Their objective is to provide information on possible patterns of failure in the application of these laws and to provide 'practical recommendations' to Parties to address the matter at hand. It is important to note that this is only a summary of the NAALC's arbitration process. In fact, for an ECE to produce a recommendation on a labour matter in the form of a Final Evaluation Report, it must comply with a set of mandatory timescales as established in the Rules of Procedure in Articles 24, 25 and 26 of the NAALC. This process, gives a number of "reasonable [opportunities to the Parties] to review and comment on information" produced by the CLC and might take up to 300 days to be completed, making this process less straightforward than it might appear. For a full, disaggregated timescale of the process, see Part Four: Cooperative Consultations and Evaluations, NAALC, 2012. For a discussion on the implications of this long-lasting process, see Delp, et al. (2004).



implementation. For this reason, I argue that the Commission for Labor Cooperation constitutes more a grouping of three domestic institutions (the National Administrative Offices) and only a handful of quasi-supranational regional mechanisms (the ECEs and the Arbitral Panels).<sup>112</sup>

Notwithstanding the above, I argue that the position of the NAOs vis-à-vis other constituting bodies of the Commission for Labor Cooperation is problematic and ambiguous. I address this issue in the following section.

#### 7.3.2.1. ARE THE NATIONAL ADMINISTRATIVE OFFICES CONSTITUTING OR SUBSIDIARY BODIES OF THE COMMISSION FOR LABOR COOPERATION?

As stated above, the National Administrative Offices are important actors in the management and operation of the NAALC. Yet, I argue that the position and functions of the NAOs are misleading, ambiguous and problematic, and contradict the original purpose of the Agreement. I further argue that although they are nominally part of the Commission for Labor Cooperation, the activities of the NAOs are not actually aimed at supporting its work. Instead, their activities have aimed at easing and administrating the relation between the Commission and their correspondent national government. However, this was not, in principle, the way in which the NAOs were expected to operate. In the following pages, I explain why the NAOs act and function in a different way than that which was established by the NAALC.

#### THE POSITION OF THE NATIONAL ADMINISTRATIVE OFFICES IN PRINCIPLE

As established on Section C, Article 16 (1) of the NAALC, the National Administrative Offices “shall serve as a point of contact with governmental agencies of that Party; NAOs of the other Parties; and the Secretariat” (NAALC, 2012). Per the agreement, the Offices are not administrators of the relations, least representatives, between their corresponding national government and the Commission. Quite the opposite, according to Section C, Article 16 (2) of the Agreement, their responsibilities are:

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<sup>112</sup> These institutions and mechanisms, however, require the approval of labour ministers (i.e. the Council) to act. This circumstance is disadvantageous to the CLC inasmuch it constrains access to the cross-border rules. As I discuss in the latter sections, this is an *intended* arrangement.

- To provide publicly available information for reports and studies under Article 14(1) and 14(2) as requested by the Secretariat, the NAO of another Party or an ECE; and
- To provide for the submission and receipt of public communications on labour law matters and review such matters, as appropriate, in accordance with domestic procedures (CLC's Secretariat, 2014; see also Caulfield, 2010, p. 66).

*In principle*, the National Administrative Offices have therefore a limited number of functions, but these are all aimed at supporting (or assisting) the work of Commission's bodies and other NAOs. Thus, per the NAALC, the NAOs are *constituting* bodies of the CLC.

Other authors agree with this reading of the NAALC on the position of the NAOs vis-à-vis the rest of the Commission for Labor Cooperation. For instance, Kay (2005, p. 112) illustrates the structure of the Commission in the following way, which resembles the argument I advance in this section about the position of the NAOs:

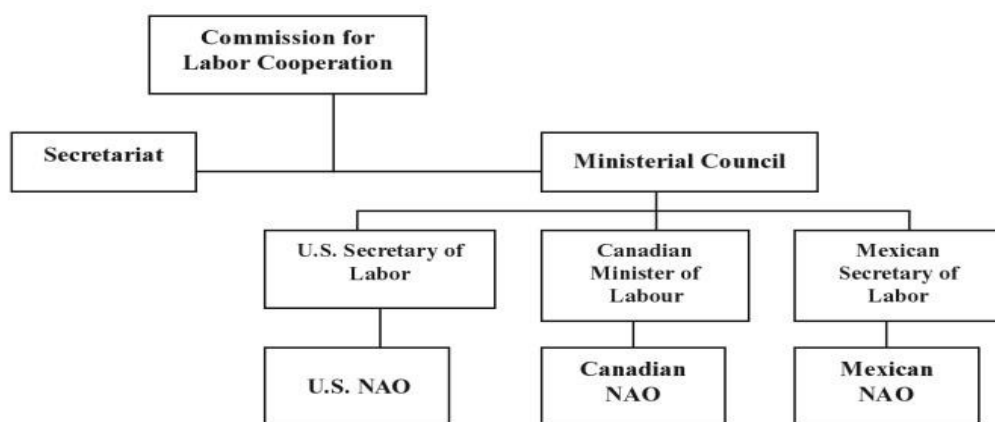
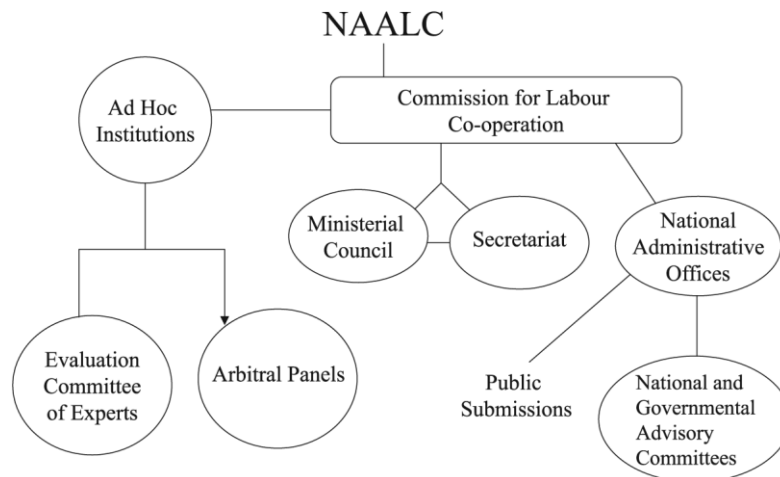
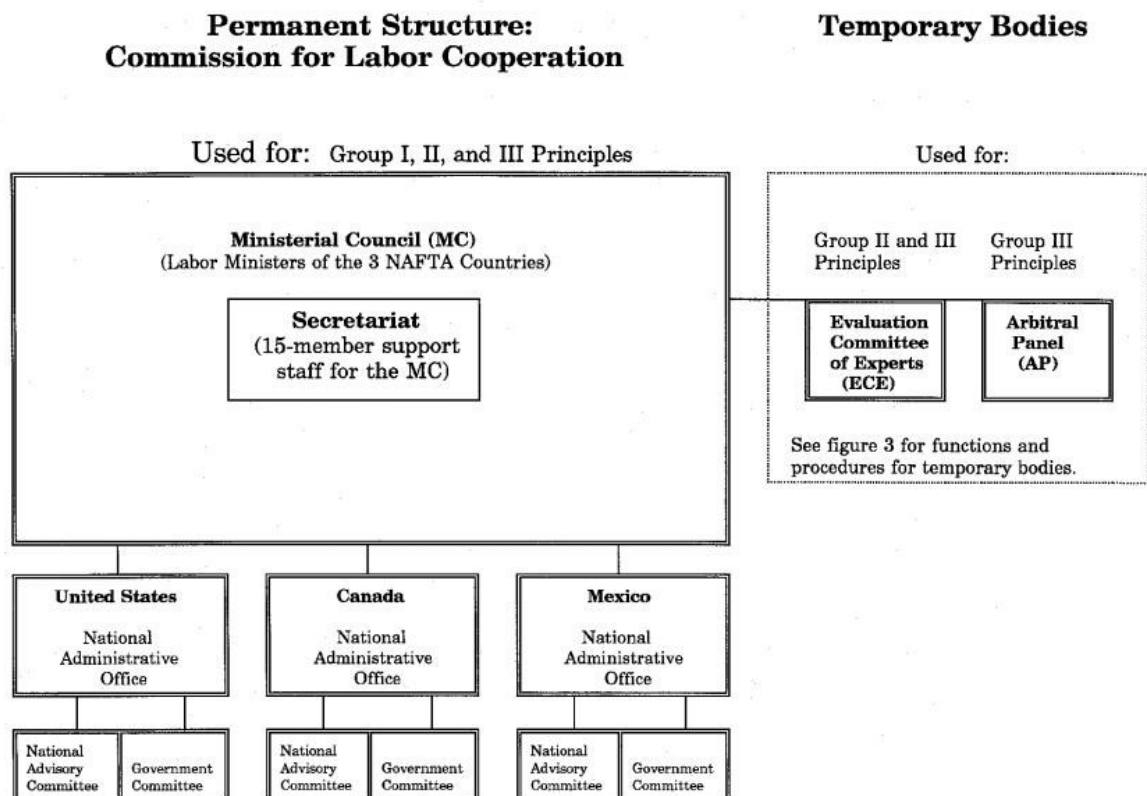


Figure 4.2. Organizational Chart of the Commission for Labor Cooperation

Teague (2003) illustrates the structure of the CLC and the position of the NAOs within it in a similar way:



Finally, Bolle (2001, p. 8) provides the best illustration of the argument that I advance here. That is, the Commission for Labor Cooperation constitutes more a grouping of three domestic institutions (the National Administrative Offices) and only a handful of quasi-supranational regional mechanisms (the ECEs and the Arbitral Panels), which per the Agreement, should be overseen by the Council and Secretariat:



All of these authors agree with the argument I advance on the position of the NAOs within the CLC, which in principle and per the provisions of the Agreement, are constituting bodies of the Commission.

#### THE POSITION OF THE NATIONAL ADMINISTRATIVE OFFICES IN PRACTICE

As I argued, the NAOs along with the Arbitral Panels constitute *in practice* the core of the Commission for Labor Cooperation as they have effectively taken over and control the functions of the Commission. I argue this based on the observations that:

- The National Administrative Offices control the access of other actors to the provisions of the agreement.
- The Council only reviews those matters accepted by the NAOs.

Therefore, *in practice*, the NAOs are the managers of the provisions of the NAALC. Neither the Council nor the Secretariat will review any issue that is not initially approved by the NAOs. What is more, the NAOs have de facto taken over the responsibilities of the Council and Secretariat. In effect, the NAOs are intermediaries between transnational actors and the regional institution, rather than mere (and neutral) points of contact supporting the work of the Secretariat (as the NAALC established). In this sense, they are gatekeepers of the agreement and its rules for the protection of labour rights. Yet, at the same time, the NAOs represent the interests of the national governments which they serve, rather than those of the regional bodies, as the Agreement established.

Other authors support this view of the NAOs. For instance, discussing the roles and responsibilities of the NAOs and the CLC's Secretariat, Aspinwall states that:

Unlike the NAAEC, a complaint (formally known as 'public communication') must go to a NAO in a different member state from where the violation allegedly occurred, and not the CLC Secretariat. The NAO receiving the complaint may then conduct an investigation of the case *if it so decides*. The

Secretariat plays *no role* in investigations. The difference between the secretariats of the CLC and the CEC reflect the higher political sensitivity associated with labour issues and the deep reluctance to permit any independent authority to emerge. The CEC Secretariat has the authority to collect facts and information and to issue factual records and reports, but the CLC Secretariat does not have these powers. Public communications are channelled through national governments. The CLC Secretariat is not part of the public communications process. It must communicate with NAOs to get information, and communications tend to be on routine administrative issues only (2013, pp. 96-97)

Similarly, Graubart argues that, in comparison with the NAAEC, the:

NAALC creates a much thinner institutional apparatus. Its Secretariat has fewer resources and is restricted to gathering and publishing information on regional labour trends. [...] Investigative authority is reserved for separate National Administrative Offices (NAOs). Each NAO is a governmental body established within the labour department of the government to which it belongs. [Such] institutional differences have proved significant” (2008, pp. 7-8)

In sum, I argue that it is important to understand the difference between the nominal and actual positions, responsibilities and powers of the NAOs, vis-à-vis other bodies of the Commission for Labor Cooperation, which have been ambiguous and problematic and have constrained the powers of the regional institution.

### 7.3.3. THE OBSTACLES TO USING THE CROSS-BORDER RULES

To conclude this section, I will finally argue that the potential of NAALC to act as a regional instrument for the protection and advancement of labour rights is much more limited than it might appear. This is due to the intricate nature of the dispute resolution mechanism, which provides multiple possibilities for the national governments to avoid enforcement

measures, and the constraints placed upon the Public Communications procedure. The national governments set these obstacles to using the cross-border rules in three different ways.

Firstly, the national governments watered down the provisions of the agreement. Contrary to what labour groups had sought, the provisions and procedural requirements of the NAALC prevent its use as a common standard for the protection of labour rights in North America. Although NAALC does identify and aim to uphold a set of fundamental labour principles, such principles were determined based on coincidences in the *existing* labour laws of the three countries. Therefore, the agreement does not aim to establish a set of common labour rights or common minimum standards for domestic law, or encourage the upward harmonisation of labour rights and standards in North America (Kay, 2011). It simply indicates broad ‘areas of concern’ in which the three countries have developed their own laws, regulations, procedures and practices regarding the protection of labour rights. Moreover, even if in principle, the NAALC is a wide-ranging agreement that may address *any* labour issue arising in the territories of the three countries, in practice only those issues covered by mutually recognised laws are actually subject to possible examinations by the Commission for Labour Cooperation or the National Administrative Offices. If a NAO receives a Public Communication on a labour issue that is not legislated in its *own* domestic legal system, the NAO cannot address such issue—even if the matter *is* indeed addressed in the legislation of the country under scrutiny. This puts into question the compromise of other national governments into contributing to uphold (and advance) labour laws and standards in other NAFTA countries.

Secondly, the national governments made access to the cross-border rules more difficult (in comparison with the environmental agreement). The precedent of the ILO with regard to the involvement of foreign actors in domestic labour issues made the national governments aware of the need and the ways to prevent access to the provisions of the agreement, especially to its dispute resolution mechanism. Thus, to constrain understanding, use and application of the Public Communications procedure by transnational actors, the national governments made it a “convoluted, drawn-out and exception-ridden mechanism designed to be used only rarely and

certainly never pursued to [its] much cited, but little understood final trade sanctions stage” (French, Jefferson and Diamond, 1994, cited in Schurtman, 2005, p. 346). Unlike NAAEC’s Citizen Submission, which is entirely handled by CEC’s Secretariat (even if it is still mediated by its Council), the NAALC’s Public Communications procedure is problematically handled by various bodies, in an intricate and lengthy process.<sup>113</sup> I argue that this is a deliberate decision rather than an incidental outcome of the agreement.

Here, it is important to note the ambiguous (and problematic) position of the National Administrative Offices with regard to the management of Public Communications. The NAOs act as gatekeepers of the agreement, yet at the same time, they are subsidiaries to their national governments (rather than the Commission for Labor Cooperation). Given that national governments are responsible for the administration, management and funding of their corresponding NAOs, access to the rules is thus effectively controlled by the national governments at all times, as the NAOs contribute to further the interests of their governments rather than those of transnational actors, such as labour unions. Finally, given that the governments of Canada, Mexico and the US have historically privileged the maintenance of cordial relations, they have tended not to instruct their NAOs to review labour issues in other North American countries. In sum, the national governments, in their roles as both members of the CLC’s Council and effective controllers of the NAOs, have constrained rather than enhanced the exchanges between transnational actors and the CLC.<sup>114</sup> I argue that these

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<sup>113</sup> I briefly explain how national governments did this. The NAOs are charged with receiving Public Communications. Given that the NAALC does not establish a procedure to file Public Communications, each individual NAO sets their own domestic procedures to evaluate, accept and review these denounces. This makes access to the cross-border rules difficult, as it actually transforms one single regional mechanism into three differentiated national procedures and requirements, which are established and may be altered without consultation with other national governments. Even if the Public Communication is accepted, the NAALC does not oblige National Administrative Offices (NAOs) to process or review such communications. In fact, to this day, the status of various Public Communications is still ‘pending’, even years after they were accepted. Furthermore, to prevent NAOs from taking a proactive stance in regards with Public Communications, the NAALC precludes these bodies from investigating possible instances of failure, even if there are denounces from transnational actors. This responsibility is left to the Arbitral Panels and is subject to Council approval –which is the cabinet body made up of the labour ministers of the national governments.

<sup>114</sup> A number of authors support this claim. For instance, Holley, Jennings and Wolters argue that the parties are sometimes “reluctant to use the conflict resolution mechanisms” of NAALC (2008, p. 631) to address complaints raised against other North American national and subnational governments. Aspinwall argues that although a number of Public Communications have “revealed some illegal or questionable practices, [in some cases,] the investigating country (usually the United States) yielded to political pressure to reject or downplay the investigation” (2013, pp. 97,101). Human Rights Watch also argues that, as a result of this selective use of the investigative and enforcement mechanisms of NAALC, “the US NAO has been uneven in its handling of NAALC non-compliance cases. At times,

circumstances make access to the rules more difficult for transnational actors and render the Public Communication procedure ineffective at best.

Thirdly and lastly, the regional institution has weak powers to enforce the cross-border rules. In the case that a claim of an alleged violation successfully passed through the intricate procedure described above, the deliberations made by the Arbitral Panels are not legally binding or adjudicatory. Their assessments have no legal status and cannot reopen or overturn any decision of any labour authority of any Party (CLC's Secretariat, 1997). They are only recommendations and, as such, it is up to the state whether to implement them. Further, even in case that a Panel determines the need for a trade sanction, the NAALC provides an 'exit clause' whereby the government in question may opt to halt the enforcement of sanctions that it considers not practicable or effective, thus making enforcement of NAALC discretionary.

Overall then, the complications in the process of using and applying the cross-border rules, and the constraints placed upon the regional institution to, possibly, 'enforce' the agreement, inhibit the use of the agreement by transnational actors –including trade unions, non-governmental organisations and labour-related groups at both the domestic and regional level. On this basis, I argue that in the creation of the arena, the national governments retained control of the negotiations and their outcome. They successfully pursued their main and secondary interests, which prevailed over the demands of transnational actors for a stronger agreement and regional institution on labour rights. In the next section, I present examples of how transnational actors have attempted to use the cross-border rules despite these procedural obstacles. I argue that in doing so they have expanded the arena on labour protection. I also explain why and how the regional institution has failed to consolidate the arena.

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the agency[']s reports have been evasive and incomplete, ignoring key issues raised by petitioners and failing to address NAALC obligations of relevance. [Therefore, the proactive stance of the US NAO] in deciding which issues to review has been undermined by an aversion on taking on tough topics" (2001, p. 6).



#### 7.4. THE EXPANSION OF THE COMMON POLICY ARENA

In this section, I review three cases where transnational actors have used the cross-border rules established by the North American Agreement on Labor Cooperation to denounce and address possible instances of failures by the national governments to enforce their own domestic laws.<sup>115</sup> The transnational actors, mainly labour unions, used these rules to prompt regional action on domestic labour issues which otherwise might have gone unaddressed or inadequately addressed by their own governments.

##### 7.4.1. THE 1994 HONEYWELL AND GENERAL ELECTRIC CASES<sup>116</sup>

I will start by reviewing the Honeywell and General Electric cases of 1994, which were the first Public Communications ever filed in any of the three countries for alleged failures to enforce domestic laws. In February 1994, only one month after the entering into force of NAALC, two US trade unions, the International Brotherhood of Teamsters (IBT) and the United Electrical, Radio and Machine Workers of America (UE) filed two separate complaints before the US National Administrative Office against the Honeywell and General Electric Corporations.<sup>117</sup> In these Public Communications, the IBT and UE denounced alleged labour abuses in the Honeywell and General Electric subsidiaries in the cities of Chihuahua and Ciudad Juárez, in the State of Chihuahua, Mexico.

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<sup>115</sup> At this point, it is worth mentioning that as opposed to the CEC and NAFTA Secretariat, the Commission for Labor Cooperation rarely releases other documents related to disputes under the NAALC beyond the Public Reports of Review. While the CEC and NAFTA Secretariat, in general, make different types of documents (i.e. memorials of cases and replies of the complainants and respondent governments) relating to Chapter 11 disputes or NAAEC Public Submissions available to the public, the Commission for Labor Cooperation (see CLC, 2010), US Department of Labor (see 2014) or Canadian Ministry of Labour (see Government of Canada, 2014) do not make other documents relating to NAALC disputes, beyond the Public Reports of Review, available for public use. What is more, Public Reports of Review for cases filed in Mexico are only available in hard copy at the Secretariat of Labour and Social Protection's Documentation Centre in Mexico City (Secretaría del Trabajo y Previsión Social, 2011). Despite these obstacles, as discussed above, I did draw whenever possible on the Public Reports of Review and other related documents released by the National Administrative Offices or Labour Ministry, Department or Secretariat of the Governments of Mexico, Canada or the United States, rather than on scholarly commentaries about them. Furthermore, where other sources confirmed the information and allegations made on Public Submissions, I preferred to include further sources *beyond* these documents. I did this in order to provide further evidence of the facts reported in the Public Submissions in order to prevent bias or overreliance on the reports produced by the regional institutions.

<sup>116</sup> Public Communication U.S. 940001: International Brotherhood of Teamsters vs. Honeywell Corporation and Mexico and Public Communication U.S. 940002 United Electrical, Radio, and Machine Workers of America vs. General Electric Corporation and Mexico.

<sup>117</sup> Although these unions did not represent Mexican workers, they filed the Public Communications at the request of labour unions in Mexico, in accordance with solidarity pacts they had subscribed with Mexican labour unions during the negotiations of NAFTA.

According to the Public Communications, Mexican workers at these plants had been affected by low wages at Honeywell, non-paid overtime at General Electric, and the violation of health and safety laws at both companies (Kay, 2011). The government-sponsored unions had failed to address these violations, and thus workers at both plants discussed the creation of independent labour unions. When Honeywell and General Electric took notice of these efforts, they used illegal threats and firings against workers to pressure them into resigning ‘voluntarily’ (Hovis, 1994, p. 2).<sup>118</sup> According to the claimants, Honeywell and General Electric had also deprived workers of their freedom of association and right to organise by hindering the creation of independent unions at their maquiladora plants in Mexico. These actions thus violated Mexican labour laws and Labour Principles 1, 6 and 9 of NAALC. The two separate Public Communications with the U.S. NAO requested “Mexico [to require these companies] to comply with Mexican law and the norms of the NAALC generally” (Scott and Brown, 1994, p. 4). The petitions did not clearly specify which Labour Principles had been transgressed (see Scott and Brown, 1994, p. 3) neither did they clearly link the petition to the ultimate purpose of the NAALC (Graubart, 2008, p. 67). Yet, the unions did request Mexico to require Honeywell and General Electric to comply with “Article 123 of the Mexican Constitution [and the] Labor Principles contained in Annex One of the NAALC” (Scott and Brown, 1994, p. 4). Through filing the Public Communications, the unions intended to test the dispute resolution mechanism and determine whether it could be used to address abuses of labour rights in other countries. Leaders at both unions asserted that they had “no major expectations” about the process (Alexander, 1999, cited in Graubart, 2008, p. 67). They also expressed that they did not expect “any kind of a real remedy” to these abuses and that they were only using these cases to expose “the fraudulent nature of the side agreements in a very public way” (Kingsley, 2001, cited in Kay, 2011, p. 127). They expected that the response to the Public Communications would

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<sup>118</sup> In the analysis of the 1994 Honeywell and General Electric cases, I used the original submissions and requests for review available on the Commission for Labor Cooperation’s archives. In the references to documents related to Citizen Submissions in this and other chapters, I have used the last names of the original submitters, whenever possible. For instance, rather than a scholarly commentator, John H. Hovis, referenced in this section as Hovis (1994), was the then-President of the United Electrical, Radio and Machine Workers of America (UE), who filed the original Submission and Public Request of Review in the General Electric case on February 1994 before the US NAO. Likewise, in this case, I used the Public Reports of Review released by the US NAO (referenced as US Department of Labor) as well as the original Public Submissions, referenced as Scott and Brown (1994).

demonstrate that NAALC and its dispute review mechanism had been crafted to suit the interests of corporations and governments at the expense of workers' rights (Graubart, 2008, p. 68). Therefore, even if the unions had no major expectations about the changes that these Public Communications could prompt, they still went on with the submission and built a public campaign around it to publicise its processing and outcome.

#### THE RESPONSE OF REGIONAL INSTITUTIONS AND THE EFFECT ON GOVERNMENTAL ACTORS

When the US National Administrative Office (NAO) received the Public Communications in February 1994, it lacked any guidance on or experience in how to proceed with it. The NAO had only been formally established just one month earlier, the guidelines for filing and accepting Public Communications had not yet been defined, and no other NAO had received any Public Communications so far. Therefore, besides having to decide whether to accept the submission, the US NAO had to develop a generalisable set of procedures and criteria for admissibility that would probably be replicated and adapted by the Canadian and Mexican NAOs in future cases (Graubart, 2008, p. 69). In these circumstances, on April 1994, the NAO decided to accept the submissions for review and decided to hold a joint hearing on these issues in September 1994.

The NAO was progressive in its interpretation of the agreement. Rather than limiting itself to gathering publicly available information as established in the NAALC's Article 16 (2), it decided to request information directly from petitioners, companies and the Mexican government. It also commissioned a report from expert consultants on Mexican labour law to gather more information on the events denounced (Graubart, 2008, p. 69). Contrary to what national governments had intended in the NAALC, the NAO decided that Public Communications could address violations of labour laws and standards specific to the companies in question, rather than just general failures by the national governments to implement such laws as established in the NAALC's Article 27(1). In this way, the NAO slightly interpreted the agreement flexibly and "fell closer to what petitioners and other labour activists [had] wanted" from the mechanism (Graubart, 2008, p. 69).

Despite its progressive approach to the processing of the Public Communication and its flexible interpretation of the provisions of NAALC – although technically the NAO was precluded from interpreting the agreement<sup>119</sup> – the NAO eventually sided with the Mexican government. In its Public Report, it concluded that it could not establish whether Mexico had failed to enforce its labour laws (US Department of Labor, 2010a). It established that, although Honeywell and General Electric had fired workers on grounds of union activism, Mexico had not violated its labour laws as those workers who were dismissed for their dissident activity had received the severance payment mandated by law (McLaughlin Hager, 1996, p. 265).<sup>120</sup> However, the US NAO acknowledged that employers were using the dismissal and severance payment options to defeat unionism (McLaughlin Hager, 1996, p. 266), which implied that the NAO accepted that there had been violations to the provisions of the Mexican Constitution and NAALC.

Despite the evidence and its own acknowledgment of violations of domestic labour laws and transgressions of the North American labour principles, the US NAO determined that Mexico had not failed to enforce its law. It argued that the enforcement was not the issue in question but instead the prevalent Mexican laws themselves, which established that workers who accept these payments cannot later complain about illegal dismissal. Responding to this conclusion, the UE said that the NAO was “poorly informed” of the status of labour rights in Mexico (Graubart, 2008, p. 69). In the view of the union, the NAO had overlooked the fact that those workers who are unduly dismissed can rarely afford to refuse the severance payment.<sup>121</sup> However, the NAO responded that it did understand the problem (US Department of Labor, 1995, p. 27). Yet it

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<sup>119</sup> As established in Article 10(1) of the NAALC, the Council is the body of the Commission responsible for overseeing the implementation, as well as developing recommendations on the further elaboration of the Agreement. Therefore, no other bodies of the Commission are allowed to interpret, least modify, the Agreement without intervention of the Council.

<sup>120</sup> McLaughlin Hager (1996) confirmed that firings at the Honeywell and GE cases had been legal, even if questionable.

<sup>121</sup> The NAO did acknowledge the fact that “the economic realities facing these Mexican workers make it very difficult to seek redress from the proper Mexican authorities for violations of Mexican labour law. These workers generally do not have the financial resources to pursue reinstatement before the [Conciliation and Arbitration Boards], often opting for settlement of their complaints in return for money, as happened here” (US Department of Labor, 1995, p. 27) However, based on “this information, the NAO [decided only to] continue to pursue trilateral programs under the NAALC which emphasise exchange in laws and procedures to protect workers from dismissal for exercising their rights to organise and to freedom of association” (US Department of Labor, 1995, p. 27). Yet, despite these findings, the NAO decided to only hold ministerial consultations “on the issues concerning union registration” (US Department of Labor, 1995, p. 33), but not on the use of severance payments as instruments to avoid legal challenges against undue dismissals.

“saw itself powerless to do anything about it” given that the firings had been legal inasmuch the workers had received the corresponding severance payments (McLaughlin Hager, 1996, pp. 265-266). The NAO also reversed its previous decisions and claimed that its mandate (Art 27.1) precluded it from addressing specific violations committed by companies. In light of this conclusion, the NAO did not recommend stepping up the Public Communication to the stage of ministerial consultations (US Department of Labor, 1995, p. 27). In light of this outcome, I argue that the use of rules by transnational actors, along with the initial response from the National Administrative Offices, resulted in a pressure for change in the behaviour of the national governments. However, when the NAOs did not step up the Public Communication to ministerial consultations, the pressure receded. For the US and Mexican governments, the Honeywell and GE cases thus served to test the effectiveness of NAALC and their firm control over the dispute review mechanism.

Overall, the US NAO was reluctant to evaluate the practices of Honeywell and GE. Despite the evidence presented, the Office refused to examine critically the legality of the dismissals at the maquiladora plants and the unwillingness of the Mexican government to uphold workers’ right to freedom of association (Grimm, 1999, p. 214). The NAO also failed to request the government to address violations to domestic laws regarding payment of minimum wages, maintenance of decent working conditions and respect for the rights of workers to organise, all of which were sanctioned in the Mexican Constitution and reaffirmed in NAALC.<sup>122</sup> Instead, the NAO focused on the fact that Honeywell and GE had made severance payments, thus legally precluding workers from complaining. It is probable that the National Administrative Office took this stance due to the unwillingness of the US government to implement the NAALC’s principles, an action that might have displeased the Mexican government (Cooke, 2003, p. 394). The NAO also failed to denounce that the government had failed to address these violations, given that the workers had attempted to break away from the official unions.

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<sup>122</sup> For instance, the NAO stated that although it questioned “its consultant, the Mexican NAO and to the witnesses [...] regarding availability of private action and procedural guarantees addressed in Articles 4 and 5 of the NAALC, [it asserted that] there may effectively no redresses available” to a number of violations identified in these cases (US Department of Labor, 1995, pp. 28-29).

Therefore, even if it acknowledged the strong concerns that arose in the allegations, the US National Administrative Office fell short of concluding that Mexico had failed to enforce its domestic labour laws. Instead, it only recommended the development of joint cooperative programs between the governments to discuss the status of freedom of association and the right of workers to organise (US Department of Labor, 2010b). No other significant actions were taken by the NAO or the national governments on these cases and the Public Communication was closed.

#### 7.4.2. THE 1996 MAXI-SWITCH CASE

I will now discuss the 1996 Maxi-Switch case, which had similar characteristics to the Honeywell and GE cases inasmuch as it also concerned the protection of the rights and labour conditions of Mexican workers, the actions of US companies and the involvement of US labour unions to address labour abuses. The complaint, filed in October 1996 by three labour unions with the US NAO, denounced labour abuses and violations to the freedom of association of workers in one of the manufacturing plants of Maxi-Switch, a US-based computer company, in the state of Sonora, Mexico (Bahr, et al., 1996).<sup>123</sup> The events denounced in this Public Communication by the Communication Workers of America (CWA), the Union of Telephone Workers of Mexico (STRM) and the Mexican Federation of Goods and Services Companies (FESEBS) mirrored those of the Honeywell and GE cases.<sup>124</sup>

In August 1995, workers at the Maxi-Switch maquiladora began to discuss and organise a trade union for their plant. The main purpose of the union was to propose, negotiate and enter into a collective contract with Maxi-Switch to raise the low salaries paid at the plant and impede the exploitation of workers. According to the Public Communication, workers had approached the plant's management to discuss the establishment of a collective contract, yet the company

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<sup>123</sup> Just as above, rather than scholarly commentators of the case, Morton Bahr, Francisco Hernández Juárez, and Benito Bahena Lome were the submitters of the original Public Communication.

<sup>124</sup> It is worth noting that the CWA, a US trade union filed the submission in accordance with its alliance with its Mexican and Canadian counterparts. The 'alliance' was formed in 1992, after the proposal of NAFTA, in an effort by the unions to support each other on issues of common concern. This was the first time that the alliance was called into action for the defence of workers' rights in North America. Less than four months after the Public Communication was filed, the Canadian Communication, Energy and Paperworkers Union joined the submission. This was the first time that a Canadian union joined a complaint under NAALC.

ignored the proposal (Bahr, et al., 1996, p. 5). Then, when workers began to discuss and organise the union, Maxi-Switch threatened and intimidated workers with firing them if they did not to abandon their effort. When a worker tried to organise the union, Maxi-Switch dismissed him (Bahr, et al., 1996, p. 5). To curtail further attempts, the company surreptitiously entered a collective contract with an unnamed white union and signed a ‘contract of protection’ with it.<sup>125</sup> The submitters claimed that the company had sidelined workers through the signing of this contract, as it prevented workers from organising an independent union affiliated to the FESEBS (Bahr, et al., 1996, p. 7). Indeed, when workers tried to register their independent labour union, the competent state authority, the Conciliation and Arbitration Board of the State of Sonora, denied the registration because Maxi-Switch already had a collective agreement with another union.

On this basis, the submitters claimed that Mexico had failed to enforce its domestic laws on freedom of association and the right to minimum employment standards and overtime pay. The unions thus called for the US NAO to examine the failure of the Mexican state and national governments to protect the rights of workers at the Maxi-Switch plant. According to the submitters, by having not upheld its domestic laws as expressed in Article 123 of the Mexican Constitution, various articles of its Federal labour law, the Mexican government has failed to meet its obligations under NAALC’s Articles 3 (1) and 5 (1,4) (Bahr, et al., 1996).

#### THE RESPONSE OF THE REGIONAL INSTITUTIONS AND THE EFFECT ON GOVERNMENTAL ACTORS

In December 1996, the US NAO accepted the submission for review and scheduled a public hearing on the matter. The NAO acted proactively in favour of the submitters. First, it decided that the hearing would take place in Tucson, Arizona, the city where Maxi-Switch Inc. is based. This was one of the first times that the US NAO would hold a hearing outside

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<sup>125</sup> A ‘white union’ is a trade union created by the management of a company, which only protects the interests of the company and does not participate in the Mexican political system. Meanwhile, a ‘protection contract’ is a legally binding document establishing a trade union and a collective agreement that offer little to no protection for workers, which is often entered without the knowledge of workers. Although these contracts curtail the freedom of workers to organise and inhibit the protection of their rights, they are still legal and common in Mexico (see International Metalworkers' Federation, 2012).

Washington, DC, in order to facilitate the gathering of information and the participation of the submitters and witnesses in the hearings. The submitters of this and other Public Communications had requested this change arguing that workers, as well as representatives of the unions and the company, would face fewer hurdles to render testimony on the events and practices denounced in the complaint. The NAO responded to these demands. Second, the US NAO decided to consult with its counterpart in Mexico to clarify the relevant facts and laws (Finbow, 2006, p. 85). This was a step-up from the treatment of previous Public Communications, in which the US NAO had gathered information on its own, without any consultation with the Mexican NAO.

On April 1997, only days before the date of the public hearing, the Mexican authorities took steps to resolve the issue outlined in the Public Communication. In a sudden change in the behaviour of the state government, the Conciliation and Arbitration Board granted registration to the independent union. This was the first instance in which a governmental actor shifted its behaviour as a result of the filing of a Public Communication. Some observers credited the CWA and the STRM with compelling the state government (and thus, Mexico) to abide to its own domestic legislation, and US government officials “hailed the move as evidence that NAALC could make a difference” (Finbow, 2006, p. 86). In light of this outcome, the CWA withdrew the submission, which implied that the hearing was cancelled and that the CLC’s Public Report of Review was not completed. No further steps were taken by the NAO with regard to the Public Communication.

However, as successful as this outcome might appear, these actions did not ultimately solve the matters addressed in the Public Communication. Although the state authorities granted the certification, they failed to enforce domestic labour laws and protect union rights. Ultimately, the company did not reinstate the union leaders and the independent union was blocked when Maxi-Switch changed the legal name of the plant, thus requiring the process of certification to recommence. The issue was taken to the courts, but it languished there (Finbow, 2006, p. 86).



Therefore, it can be argued that despite the use of NAALC provisions, the behaviour of the governmental actors was not ultimately altered.

On the Maxi-Switch case, the cross-border rules thus had no effect on the national or state governments. Yet, the case highlighted two important issues. First, the provisions of NAALC only target and bind the national governments of the three countries. This means that, just as with Canada and the US, the federal government is the only actual Party to NAALC. While on the Maxi-Switch case, the submitters filed the complaint against the Mexican federal government, the fact is that the authorities who had failed to uphold local labour laws and the rights of workers had been the state ones, specifically, the Conciliation and Arbitration Board of the State of Sonora. Despite the filing of the Public Communication, the federal government was unable to force compliance upon the state government and consequently took no steps to address the issue. The Maxi-Switch case thus shows the constraints on using and applying NAALC and other intergovernmental or international agreements in federal states such as the North American ones.

Second, despite the abovementioned obstacles, the federal and state governments may have felt pressured as a result of the public campaign structured by the US and Mexican labour unions around the Public Communication. Yet, when the public communication was withdrawn, such pressure receded. This left the submitters without the main tool they had to prompt fulfilment of NAALC, that is, the ‘sunshine effect’ created by the formal review of a country’s compliance with its own laws by another national government, which promotes public engagement and evaluation of the issue by interested parties in other North American countries. Without this effect, the governments were no longer pressed to fulfil their obligations under domestic law and NAALC.

In sum, the outcome of this case supports the view that national governments negotiated and entered a mutually satisfactory agreement, which only enhanced their capacities to achieve economic gains but that did not actually protect the rights and freedoms of workers. It also

supports the view that the regional institution for labour cooperation –of which the NAOs are technically part– merely locks-in commitments, but does not play a significant role in furthering integration, in this case, leveraging regional rules to prompt change at the domestic level. This case, along with the Maxi-Switch and North Carolina cases (discussed below), may thus support the claim of Liberal Intergovernmentalism that the decisions of national governments determine the pace and extent of the process. However, as I argue in the following pages, this is a partial view of the process, which fails to acknowledge that labour unions in the three countries have used and applied the cross-border rules, and fostered governmental action over issues that had otherwise gone unaddressed.

#### 7.4.3. THE 2006 AND 2008 NORTH CAROLINA CASES

The last cases to be analysed in this chapter are the 2006 and 2008 North Carolina cases, which resemble the one analysed above, but took place in the United States. The cases originated on October 2006, when the Frente Auténtico del Trabajo (FAT), on behalf of a group of North Carolinian public employees, filed a complaint against the state of North Carolina, US, for alleged violations to the rights of 650,000 state public employees. More than 50 labour groups from the US, Canada and Mexico joined the Public Communication, which denounced that North Carolinian public workers had been precluded from bargaining collectively due to the provisions of a state labour law. According to the submitters, the enforcement of this law had resulted in discriminatory employment practices and unsafe workplaces that violated the Principles 1 and 2 of NAALC which promote and aim to ensure the freedom of association and protection of the right to organise and the right to bargain collectively, correspondingly (US Department of Labor, 2010b).<sup>126</sup> Given that labour unions in North Carolina had been unable to overturn it, they sought assistance from Canadian and Mexican unions through the filing of public communications before the Commission for Labour Cooperation.

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<sup>126</sup> As previously mentioned, in the analysis of the 2006 and 2008 North Carolina cases, I used information provided by the US Department of Labor on the status of submissions under the NAALC (referenced as US Department of Labor, 2010b), reports on Public Communications and (their) Results, 1994-2008, released by the Commission for Labor Cooperation's Secretariat. The original Public Communication submitted to the Mexican NAO is referenced as Frente Auténtico del Trabajo (2006) given that this trade union was the original submitter of the complaint.

The submitters alleged that the General Statute §95-98, a local labour law dating back to 1959, curtailed their freedom of association and their right to collective bargaining. The Statute declared collective bargaining agreements in the public sector to be against policies of the State of North Carolina and thus “illegal, unlawful, void and of no effect” (North Carolina General Assembly, 2012). The submitters alleged that this prohibition had resulted in demands for safe work conditions being ignored and had contributed to the prevalence of race and sex discrimination as well as wage and overtime violations, as workers in the public sector had no means of collective protection against undue action of the State government (Frente Auténtico del Trabajo, 2006, pp. 11-12).

Just as in the Maxi-Switch case, the Public Communication against North Carolina related to state laws and the actions of a state government. Because the state of North Carolina, as well as the rest of the US and Mexican states and Canadian provinces is self-governing, the federal government cannot prevent states from establishing their own labour laws –unless such laws contravene their corresponding federal Constitution. Therefore, while the US government had not necessary failed to uphold its own domestic laws, the submitters claimed that the North Carolinian law undermined the commitments of the NAFTA Parties to protect, enhance and enforce workers’ basic rights. In doing so, the submitters appealed to the spirit and intent of NAALC rather than to its explicit provisions. They claimed that the government had failed to address what constituted “blatant violations of workers’ rights to collectively bargain in North Carolina” (Frente Auténtico del Trabajo, 2006, p. 5). According to the submitters, the US was failing to uphold its obligation, arising from its participation in NAALC, to protect the fundamental labour rights of workers.<sup>127</sup> The Mexican union, in conjunction with its US and Canadian partners, thus requested the Mexican NAO to review its complaint, and that the

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<sup>127</sup> Although the unions understood that filing a Public Communication did not carry the imposition of any punishment, they believed that the complaint would publicly expose the US and North Carolina’s wrongdoing, and push the relevant authorities to “put it right” (Alcalde Justiniani, 2006, cited in Gómez Mena, 2006). To increase the pressure, on April 2008 the United Electrical, Radio and Machine Workers of America (UE), along with more than 40 labour groups from the US, Canada and Mexico, as well as two global union federations, submitted another complaint on the same issue, this time with the Canadian NAO.

Mexican Secretary of Labour initiate consultations with its US counterpart to discuss and resolve the issue.

#### THE RESPONSE OF REGIONAL INSTITUTIONS AND THE EFFECT ON GOVERNMENTAL ACTORS

The Mexican NAO responded proactively to the demands of transnational actors. In October 2007, it requested its US counterpart to hold technical consultations in order to extend its understanding of a given issue. Yet, in the absence of a prompt response, it stepped up the pressure on its US counterpart by making an “immediate call for answers to questions” on the progress made in granting collective bargaining rights to public sector workers in North Carolina (UE News Update, 2007). This stronger call for action went beyond the collaborative approach that was expected from a National Administrative Office.<sup>128</sup>

The action of the Mexican NAO was taken up by transnational actors as evidence that NAALC could and was being used to challenge the violations to labour rights (ICEM, 2007). The ‘sunshine effect’ created by these complaints in conjunction with the ‘strong’ call for action of the Mexican NAO, contributed to getting more labour groups involved in the public campaign around this issue. This effect, however, was curtailed by the lack of further action by the NAO, which failed to make its report public and a follow-up of this issue. It is likely that these failures were the reason for which another Public Communication was filed before the Canadian NAO approximately two years later. Despite this precedent, the Canadian NAO also failed to release its public report on the issues, and the status of the Public Report of Review is still pending to this day (CLC's Secretariat, 2009, p. 1).

Without the pressure of a Public Report, the public campaign structured around the submissions waned and so did the pressure for the national governments to address the issue. The Public Communication failed to progress to ministerial consultations –the next stage in the dispute

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<sup>128</sup> The NAALC allows any NAO to request consultations with other Offices to seek information or clarifications concerning labour laws or practices in their territories, but it does not force NAOs to provide such information.

review process and the start of the mechanism which could have eventually led to the establishment of trade sanctions to the United States.<sup>129</sup>

Yet, on February 2009, as a result of the Public Communications and the public campaign structured around them, a Bill was put before the North Carolina Senate to repeal General Statute §95-98. Despite failing to be passed, this Bill was an unprecedented policy development in the fifty years of existence of this law. As a result of the campaign and the proposition of the Bill, more groups from the US, Canada and Mexico joined these demands. Significantly, these groups claim that on the North Carolina case as well as other cases relating to upholding collective bargaining rights across the US, the federal government has failed to enforce the provisions of NAALC and take steps to repeal the statute prohibiting collective bargaining in public employment in North Carolina (see AFL-CIO et. al., 2010). As a result of this public campaign, partly based in the two Public Communications, a Bill to repeal General Statute §95-98 was put forward for discussion in the North Carolina Senate again in the 2011-2012 Session. As of mid-June 2013, the Bill was still under consideration and General Statute §95-98 remained in full effect (LegiScan, 2013).

In sum, the Public Communications contributed to increase engagement of transnational actors with the regional agreement and its rule on effective enforcement of domestic labour laws. Yet, the behaviour of US federal and state authorities was not significantly altered as a result of the use of NAALC. As I explain later in this chapter, it is unlikely that that there will be a significant change in the policy outcome of the North Carolina case in the coming years.

#### OBSERVATIONS FROM THE CASES

From the cases analysed above, I maintain that despite the deliberate constraints placed upon the regional agreement and institution, transnational actors have used –even if limitedly– the rules of NAALC and the framework of the CLC in ways that go beyond the actual provisions and

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<sup>129</sup> Here, it is important to consider that although recommendations resulting from a review process are non-binding, the report is publicly available. Just as it happened in previous cases, it is probable that neither the US nor Mexico wanted to engage in a diplomatic and political dispute over labour issues. Given that NAOs are under direct control of the national governments, it is likely then that both cases were quietly dropped.

capacities of this agreement and institution (see Annexes for further discussion of this argument). In the three cases, the labour groups involved or taking part in the submission of Public Communications used the rules of the arena. That is, labour unions and other labour and social-oriented groups have engaged in transnational action for the defence and improvement of labour rights, standards and conditions as if the agreement and institution had actually promoted and supported such linkages and activities. I therefore claim that these groups have indeed used the framework established by NAALC to promote cross-border interaction and shifts on patterns of state action.

Compa (1997c; 1999; 2001) Graubart (2008) and Kay (2011) argue that transnational actors have used the NAALC in various ways. Firstly, they have established regional support networks that advocate for the defence and improvement of labour rights at a regional level. Secondly, they have engaged in the elaboration of and support for Public Communications before the CLC. Thirdly, they have established fora between US, Canadian and Mexican labour unions and groups for the discussions of other issues of common interest, including but not limited to the social, environmental and economic effects of North American integration. Largely, these uses summarise the forms of transnational activity that NAALC did not explicitly foster but rather *enabled*. In other words, even if the Agreement and the Commission were not as comprehensive, firm and broad as labour unions and other social-oriented actors had originally requested, their establishment has indeed resulted in increased transnational activity that would not have been occurred without the implementation of NAALC. I revise these interactions in more detail below.

#### 7.4.4. THE ESTABLISHMENT OF REGIONAL SUPPORT NETWORKS

The NAALC is only aimed at complying with existing laws, rather than strengthening or advancing them. Therefore, labour unions and workers' groups in the US, Canada and Mexico identified the need to increasingly cooperate and engage with each other in order to secure better working conditions and labour standards. This development is probably one of the most significant effects of the establishment of NAALC and one of the most visible forms of

transnational activity in this common policy arena. These actors have organised themselves and interacted beyond national borders to advance, gain or provide support to their causes. Over time, these interactions have resulted in the creation of regional support networks (RSNs) (Merideth and Brown, 1995; Foster, 2005; Adler, 2012). In general, these networks contribute to furthering cross-border relationships between unions and workers and support the emergence and development of independent organising activities.

In the US and Canada, the activities of these networks have mainly revolved around providing social and political support to each other's labour demands. In Mexico, however, the establishment of RSNs has been of more significance, as their efforts have contributed to building-up independent, member-controlled unions (Merideth and Brown, 1995, p. 85). These links have provided workers' groups with leverage and a higher public profile for advancing their demands, which had been previously ignored by Mexican governments (Foster, 2005, p. 219). As seen in the Honeywell, General Electric and Maxi-Switch cases, the state-affiliated Mexican trade unions showed no significant interest in defending their members' rights. More often than not, this lack of strong labour unions resulted in unsafe working conditions and abusive labour practices not being denounced, least addressed. To face this situation, labour groups in the three countries established alliances that allowed them to cooperate, thus providing each other with strength and protection to build their movement (Compa, 2001, p. 457). I argue that, although this increased interaction was not deliberately promoted by the national governments, it was enabled as a result of the entering into force of NAALC, and fostered by its requirements on the filing of Public Communications.

#### 7.4.5. ENGAGEMENT IN THE ELABORATION OF AND SUPPORT FOR JOINT COMPLAINTS BEFORE THE CLC

The possibility of elaborating and submitting a complaint is probably one of the major benefits of NAALC (Compa, 1999, p. 381). The most evident implication of this process is the provision of a formal and public review, in principle open to any individual or group in North

America, consisting of an independent evaluation procedure and, if necessary, an impartial arbitration mechanism.

These provisions were intended to prevent national governments from judging themselves or one another, and thus subverting the objectives of NAALC. Nonetheless, they also promoted the creation of cross-border partnerships between labour activists and groups, which must work together in order to file a Public Communication (Compa, 1999, p. 381).<sup>130</sup> As workers' groups pool their resources and expertise in compiling and filing a Public Communication, they overcome informational, logistical or other practical constraints that they might have faced should they have filed the complaint on their own. Indeed, there has been a "general trend toward increased joint participation on submission cases. While in the first cases only "one or two unions participated in joint actions [...] this number increased to about fifty for some of the most recent cases" (Kay, 2005, pp. 741-742). Importantly, many of the unions that worked together to file Public Communications had had no contact before the implementation of NAALC. Notwithstanding the outcomes that resulted from the submission of these complaints, these actors used, applied, and interpreted the rules of the arena. It is through these and the other transnational activities that I discuss in this section, that the arena expanded. In the continued use of the Public Communications procedure, and the increasing number of unions and other labour groups involved, we can notice the progressive expansion of the common policy arena.

#### 7.4.6. ESTABLISHMENT OF FORA FOR THE DISCUSSION OF OTHER ISSUES OF COMMON INTEREST

Before the implementation of NAALC, labour actors and civil society groups in Canada, Mexico and the US with interests in the defence and advancement of labour and other social rights lacked an institutional framework from which to build-up fora for the discussion of other issues of common interest. As previously explained, those cross-border exchanges that took place between these actors were sporadic and rarely translated into stable relationships,

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<sup>130</sup> For instance, workers in Mexico looking to file a complaint for violations to their labour rights might look for support of labour groups in the US to file a joint complaint. This is what happened in the Honeywell and GE cases, and vice versa in the North Carolina case.



much less the joining up of efforts to realise mutual interests. However, the establishment of NAALC and the interactions that resulted from the discussion, drafting and submission of Public Communications to the CLC enabled labour and other social-oriented groups from the three countries to build up networks. These groups use these networks to discuss, analyse and address issues of common interest related to the social, political, and economic challenges that have accompanied the liberalisation of trade and investment in North America.

As Brook and Fox (2002) assert, for a number of actors the establishment of the NAALC involved a shift towards ‘transnational’ thinking and enabled labour groups to seek out and find collaborators in other North American countries. By coming together to discuss their individual concerns these groups have discerned their common interests and developed cooperative relationships to advance them (Kay, 2011, p. 102). More importantly, some of these collective interests and actions eventually turned into stable discussion and cooperation mechanisms for the joint defence, upholding and improvement of social issues beyond the defence of labour rights and standards throughout North America.

Based on the occurrence of these three forms of transnational activity, I claim that the arena has expanded. It has done so in ways that the national governments did not intend or promote through the implementation of the NAALC or the functioning of the CLC or its NAOs. In my theoretical framework, the expansion of the arena was a progression that the national governments did not expect.

## 7.5. THE FAILURE TO CONSOLIDATE THE COMMON POLICY ARENA

I concur with most observers that the North American Agreement on Labor Cooperation is a very weak instrument for the protection of labour rights and the maintenance of labour standards (see Compa, 1997; Bremer, 1999; Caufield, 2010). Yet, in exchange with these scholars, I argue that the agreement’s lack of force results not from the absence of effective enforcement mechanisms, but from the procedural difficulties for transnational actors to access the cross-border rules and the regional institution’s lack of power to respond to their demands

through the modification of rules. I argue that the lack of significant enforcement mechanisms may not actually be as much of an obstacle for the expansion and consolidation of the arena. In fact, in the arena on environmental cooperation, where the regional institutions do not possess significant enforcement powers either, it is possible to observe significant changes to the rules and noticeable shifts in the behaviour of nation-states resulting from the use, application, interpretation and modification of cross-border rules by transnational actors. Yet, this is not the case in the arena on labour protection.

Therefore, I argue that the most important impediment for the expansion and consolidation of the arena are instead the obstacles preventing transnational actors from using the cross-border rules. While some scholars argue that the arena has “not turned out to be sufficiently well structured to promote cooperation” (Nolan García, 2012, p. 2; Nolan García, 2013, cited in Genna and Mayer-Foulkes, 2013, p. 6), I argue that the national governments deficiently structured the arena purposely so as to prevent its consolidation through regional policy-making. In their view, through the implementation of NAALC and the establishment of the CLC, their countries were already opening themselves up to independent and potentially critical evaluations (and possibly arbitrations) over their enforcement of labour laws and standards. Given that the CLC had already been given the power to determine whether a country was enforcing its domestic labour laws in accordance with the provisions of the agreement, the national governments refused to give more powers to the institution.

In the context of my theoretical framework, the national governments did this in order to meet their national interests on securing NAFTA in their legislatures, while avoiding the creation of an ILO-like regional institution. Thus, the dispute and sanction mechanism seems to have been designed from the beginning to (limitedly) promote cooperation among the three countries on labour issues, only to the extent that it does not compromise the sovereignty of the nation-states and the control of national governments over labour issues. The US, Canadian and Mexican governments carefully circumscribed the CLC to retain their sovereign competences with respect to both the content of their laws and the procedures and authority to enforce them.

The objective of the poor structuring of the NAALC was the creation of cross-border rules and regional institutions that would suffice to ensure the passing of the agreement in the legislatures, but also discourage transnational actors from engaging with such cross-border rules and interacting with the regional institutions. This objective is nowhere more noticeable than in the structure, capacities and limitations of the NAALC's complaint system. The dispute and sanctions mechanisms in NAALC are deliberately lengthy and intricate to maintain firm national control over domestic labour issues and prevent the transformation of the CLC into a strong regional institution. By constraining the participation of transnational actors in the arena, national governments constrained the regional institution to change and improve the cross-border rules in the ways that transnational actors demanded.

In brief, the lack of enforcement powers of the CLC to address possible instances of violations of labour rights *is not as important as the obstacles faced by transnational actors to bring cases* –in the form of Public Communications– *to the attention of the regional institution in the first place*. So far, a number of transnational actors have been able to overcome these obstacles, and in doing so, have expanded the arena. Yet, the regional institutions have failed to promote the creation and improvement of cross-border rules, because they were never intended or able to do so. Since the beginning their ability to deliver more and better rules, which responded to the demands of transnational actors, was heavily constrained.

This obstacle has been further aggravated by the fact that over the last ten years the actions of the national governments have been largely driven by an interest in undermining the NAALC process, not strengthening it (Nolan García, 2012, p. 6). Recurrently, national governments have made changes to the structure of the NAOs, thus jeopardising their position and very limited ability to engage with transnational actors. They also progressively defunded the Secretariat until they dismantled it through its 'temporary' closure. The CLC was closed in August 2010 and as of late 2013, has not been reopened. Just as it occurred before the 1990s, the institutional framework of the CLC was disbanded and replaced with 'direct joint work' between the

national governments (CLC's Council, 2010). This puts into question the commitment of the North American governments to labour cooperation.

It would be difficult to further discuss the closure of the Commission for Labor Cooperation because the national governments provided very limited information on the issue in their statement published on the CLC's website. As Aspinwall states, "the closure of the office was [purportedly] undertaken to allow the NAOs to look for ways 'to improve the implementation' of the NAALC" (2013, p. 97). Allegedly, the Council "directed the three NAOs to provide a report not later than February 21, 2011 with recommendations as to the form and nature of the operations of the Secretariat" (CLC's Council, 2010). Yet, as of May 2014, no such report has been released. Other scholars have also noted the closure of the CLC (see Nolan García, 2012, p. 5; Ozarow, 2013, p. 519). Yet, they have not further examined the issue, most likely on the same grounds of limited information.

Genna and Mayer-Foulkes (2013) are the only authors who have provided a possible explanation for the closure of the CLC. These authors argue that "after the 2000 election, the Bush administration moved to isolate the Department of Labor and reverse the initiatives begun under the relatively pro-labour Clinton administration. The appointment of Republican officials that were hostile to labour into administrative positions of the Department of Labor, the reorganization of the international wing where the NAO is housed (the Bureau [of] International Labor Affairs, ILAB) and cuts in funding to international labour rights programs during the Bush administration all in turn affected the way that the US Department of Labor addressed labour issues, including international efforts like the NAALC. [...] With the US NAO tied up in the politicization of the Department of Labor, Mexico took the opportunity to step back from the NAALC" (2013, pp. 106-107). Although further information would be required to confirm this account, it does appear to be consistent with the overall behaviour of the national governments towards the NAALC and the arena on labour issues in general.

In sum, it can be claimed that the cross-border rules and regional institutions are being actively deteriorated by the national governments. On this basis, I argue that although transnational

actors have successfully expanded the arena, the regional institutions have been unable to consolidate it.

#### 7.6. WAS THE STRUCTURE OF THE REGIONAL INSTITUTIONS CREATED BY THE NAALC THE RESULT OF DIFFICULT POLITICAL BARGAINING OR SHARED GOVERNMENT INTENT?

The theoretical framework I proposed in this thesis does acknowledge (and even stresses) the importance of intergovernmental bargaining as a significant part of the process of regional integration. Following this assertion, it is possible (and likely) that the final structure of the NAALC was the product of difficult political bargaining. Yet, the argument that the NAALC resulted from difficult political bargaining does not exclude the possibility (I argue, more likely) that the institutional structure of the NAALC resulted from a shared intent in creating a weak and non-intrusive labour agreement and institution. To date, there is still a debate on this issue in the scholarship on North American integration.

As Delp, Arriaga, Palma, Urita and Valenzuela (2004) assert, some scholars argue that the institutional weakness of the CLC and the overall effectiveness of the NAALC is the result of the constraints inherent to an agreement achieved through compromise (2004, p. 10). Among the authors that would agree with this view is Dombois (2002), who argues that the institutional design of the NAALC is “the product of a complicated compromise among unequal partners with widely divergent interests” (p. 20). Likewise, Finbow (2006) argues that “despite its weaknesses, the NAALC may be the best side agreement which could be negotiated, given differing needs and interests of developed and developing states on the trade-labour link, the asymmetrical regionalism in North America, the weakness of labour and social movements and the intractability of domestic presidential and federal institutions” (p. 5). In brief, these scholars regard the institutional structure of the NAALC as the result of difficult intergovernmental bargaining.

However, “on the other end of the spectrum [there] are those who believe that the NAALC is inherently flawed and therefore ‘designed to fail’” (2004, p. 10). These scholars argue that the institutional outcome that we can observe in the common policy on labour cooperation is the result of the shared intent of national governments, which was *intended* to be weak.

For instance, notwithstanding his arguments above, Finbow claims that the difficult bargaining the North American states engaged in, including the asymmetry of the states involved and their diverging national preferences, “cannot explain why labour [issues were] marginalised, while enforcement was permitted in trade and intellectual property” (2006, p. 42). Instead, he argues that the North American states did not aim, neither were “well suited to securing national commitment to transnational regimes in labour and social policy” (2006, p. 47). Finbow argues that this is because *all* the North American states were interested in retaining and affirming their sovereignty over labour issues and their right to establish their own laws and regulations on this matter.

Similarly, Dombois also asserts that from the outset, the NAALC was intended to be a weak agreement. According to this author, this “is why the NAALC provided neither supranational norms nor the harmonisation of labour standards [,] why the NAALC has granted meagre resources to its international institutions [, i.e. the Commission and Secretariat,] and why it has not given them rule-setting and enforcement authority” (2002, p. 20). As Delp et al. (2004) argue “respect for sovereignty [...] is a fundamental NAALC principle” (2004, p. 10). I concur that this is the reason for which the national governments designed the NAALC to be a weak and non-intrusive agreement.

Other authors also agree with the argument I advance –that the institutional structure set in place by the NAALC is an outcome that resulted from the shared preferences of states on protecting their sovereignty rather than difficult bargaining. For instance, Castro Rea (2012) argues that “the three governments of the region designed the agreement to maintain their sovereign control over labour issues” (Castro Rea, 2012, p. 145). Bolle (2001) provides further support for this view when she describes the NAALC “essentially [as] non-invasive way of promoting worker

rights. It is non-invasive in that it does not require any country to adopt any new worker rights laws or conform to any international standards — only to enforce what it already has on the books. [According to Bolle, the] NAALC is at the same time both ‘broad’ and relatively ‘weak’” (p. 2). Furthermore, Aspinwall also agrees with the view that “the NAALC is certainly a weak institution, reflecting deep opposition in Mexico and the United States to supranational labour authority. Preserving national sovereignty was paramount” (2013, p. 94).

Other authors have already provided support and evidence for the argument that national governments aimed at protecting and retaining their national sovereignty over labour issues by deliberately weakening the agreement and its institutions. For instance, in their account of the NAALC negotiations, Cameron and Tomlin provided an extended description of the view of a Mexican negotiator of the NAALC (see 2000, p. 199-200). In brief, the Mexican negotiator regarded the NAALC “as a bit of a joke. [...] There are consultations, you can complain about anything. [But,] the system is not worth a damn. It is a forum for complaints, and at the end of the day everyone says ‘nice to talk with you, good luck’. [...] “Lots of public discourse, nothing more. *This is the result we wanted*” (2000, p. 200). Other accounts confirm this kind of view towards the side agreements. For instance, “the chief Mexican negotiator, Secretary of Commerce Jaime Serra Puche, assured Mexican legislators that the lengthy and complex process required by the side agreements ‘makes it very improbable that the stage of sanctions could be reached’” (Negrete, 1993, cited in Levinson, 1993, p. 12).

Similarly, as previously mentioned in this thesis, the Canadian Government also regarded the NAALC as less relevant than the NAAEC and far less relevant than the main text of the NAFTA. As I previously argued in this thesis, neither Canada nor Mexico were interested in negotiating an agreement on labour, but they did so to achieve the main bargain, NAFTA. Yet, for the US under Clinton, the negotiation of a labour side agreement was required in order to secure ratification of NAFTA in Congress. The US Executive proposed and negotiated an agreement with Canada and Mexico that was only strong enough to fulfil the conditions of the NAFTA Implementation Act of 1993 set forth by the US Congress (see Dombois, Hornberger

and Winter (2003)). Although the demands for the protection and improvement of labour conditions in North America led to the proposal of the labour agreement, I argue that the US government only negotiated it as a necessary condition to ensure the attainment of NAFTA.

In sum, the preferences of the three national governments with regard to the NAALC resulted in a weak labour agreement and an institution with no enforcement powers. I argue that this is the reason why the national governments established a very different organisational structure for the CLC in comparison with the CEC.<sup>131</sup> That is, a regional institution without significant enforcement powers. Other scholars confirm this assertion. Bierman states that “underpinning the [Commission for Labor Cooperation’s] formation was clearly a desire among the three countries to not create a commission with POWERS (emphasis in original), but rather one with very loose authorities, almost a research-type agency. Somewhat similar dynamics surround the NAOs formed in the different countries, which have a strong ‘conciliation’ focus. Indeed, the most prevalent outcome [...] under the NAALC is ‘ministerial consultations’. Long story short, [it can be argued] that the whole story surrounding the formation of the Labor Cooperation Commission and even the NAOs is one of the countries not delegating their powers” (personal communication, 15 April 2014; see Annexes). Similarly, Gely states that the creation of weak institutions “seems to have been the intent of the three signatory countries. [...] The stronger evidence of that is the type of institution they created”, i.e. a regional institution without significant enforcement powers (personal communication, 17 April 2014).

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<sup>131</sup> As Aspinwall describes, “the NAALC created a Commission for Labor Cooperation with a slightly different organizational structure than the CEC. In addition to a Council [...] and the Secretariat, the National Administrative Office was established in the labor ministry of each country. No counterpart to the environmental JPAC was included, in which civil society was made part of the institution. Unlike the NAAEC, a complaint [...] must go to an NAO in a different member state from where the violation allegedly occurred, and not to the CLC Secretariat. The NAO receiving the complaint may then conduct an investigation of the case if it so decides. The Secretariat plays no role in the investigation” (2013, p. 96). Further, Dombois asserted that given such constraints, the NAALC would become less and less relevant for the protection of labour rights in North America. According to this author, “the NAALC will not have much of a future if [such practices] continue. [...] Non-governmental groups will withdraw from the NAALC completely and its activities will be confined to intergovernmental diplomacy” (2002, p. 20). Recent developments suggest that Dombois’ predictions were accurate. In April 2014, the US Labor Secretary and the Mexican Secretary of Labor and Social Protection (STPS), conducted a series of consultations to address the “issues included in three Public Communications filed before the [Mexican Secretariat of Labour] concerning the rights of migrant Mexican workers in the United States” (STPS, 2014). Although such consultations were conducted *explicitly* under the framework of the North American Agreement on Labor Cooperation, they have taken the form of direct bilateral exchanges and agreements, which bypassed the publication of a Public Report of Review as established in the NAALC (see CLC’s Secretariat, 2012).



For the abovementioned reasons, while I do acknowledge that the institutional structure created by the NAALC might have been the result of difficult political bargaining, it is more likely that this outcome was the result of the shared intent of the North American national governments in creating a weak regional institution on labour issues.

#### 7.7. THE LOW INSTITUTIONALISATION OF THE COMMON POLICY ARENA

As shown in the cases above, the NAALC and CLC may be regarded as limited instruments for the defence and enhancement of labour rights in North America. Transnational actors have acknowledged these limitations and constraints since their implementation, and thus decided to interact limitedly with them. This decision is reflected in both the declarations of representatives from trade unions and other labour groups, who have expressed their dissatisfaction with the weakness of the labour agreement (see Graubart, 2008), as well in the number of Public Communications filed and accepted until this date. As seen in Table 3, so far, a limited number of submissions have been filed under NAALC.

<b>TABLE 2.</b> <b>CITIZEN INPUTS FILED WITH THE COMMISSIONS FOR ENVIRONMENTAL</b> <b>AND LABOR COOPERATION</b> <b>(1994-2013)<sup>132</sup></b>		
	<b>CEC</b>	<b>CLC</b>
Citizen Inputs (CIs) Filed	83	37
Declined for Review by Institution	30	10
Withdrawn/Abandoned by Submitters	22	4
Resulted in Public Report by Institution	18	19
Citizen Input-to-Public Report (approx.)	5 CIs per report	2 CIs per report

Sources: (CLC, 2010; CEC, 2013)

In total, 37 Public Communications were filed between January 1994 and March 2010. This number contrasts with the 83 Citizen Submissions that have been filed under NAAEC from 1994 to late 2013. Out of these citizen inputs, only 18 resulted in the creation of a factual record

<sup>132</sup> The date of latest data available for Public Communications filed with the Commission for Labor Cooperation is August 2010, when the institution was closed.

by the CEC. In exchange, the CLC created 19 Public Reports in roughly the same period. This means that the Commission for Environmental Cooperation received five citizen inputs for every report it made, while the Commission for Labor Cooperation received two citizen inputs for every report. From these figures, it could be argued that the CLC is more efficient in turning citizen inputs into public reports than its environmental counterpart.

However, I argue that the ratio of submissions-to-reports is the only figure significantly more favourable to the CLC. Instead, I posit that these figures indicate that the rules of the labour agreement are only used half as much as those of the environmental agreement, despite both being open to the same kind of transnational actors, i.e. civil society groups. Furthermore, in almost all cases, including those reviewed above, the use of the rules of NAALC had little or no effect over the behaviour of governmental actors. These failures are far from being anecdotal or exceptional. According to Graubart, out of the 21 Public Communications filed until 2008 before any of the NAOs, only eight resulted in a modest or significant change in the issues addressed, while 12 of them resulted in no change at all. In contrast, of the Citizen Submissions filed before the CEC in the roughly same period, 14 resulted in a significant or modest change while 10 resulted in no change at all (2008, pp. 87-89,125-126).

Given the analysis above, we can conclude that the constraints placed upon the use of rules have prevented (or deterred) transnational actors from using the rules of the labour agreement. Further, when transnational actors have managed (or been willing) to use the rules, the constraints placed upon the Commission for Labor Cooperation have prevented it from being proactive and able to deliver the changes to the rules demanded by the transnational actors. Overall, these constraints have resulted in the creation and functioning of a Commission that has little say in the management and application of the agreement. In this respect, I argue that the control of NAOs on access to the rules and the fact that the Council has the final say in whether a labour issue progresses in the dispute review and resolution process, largely explain why citizen submissions have produced more successful changes in the environmental arena than on the labour one.

## 7.8. CONCLUSIONS

In this thesis, I argue that the actions of transnational actors and regional institutions are crucial for the expansion and consolidation of a common policy arena. If rules are created by the national governments and such rules are used by the transnational actors, the latter will eventually encounter the limits of the current rules and demand new and better ones. When regional institutions –or national governments– meet this demand, new cross-border rules are created and transnational actors improve or increase their exchanges. As a result of this process, regional institutions increase their powers and the institutionalisation of the arena increases. In exchange, if regional institutions –or national governments– fail to meet this demand, exchanges between transnational actors are hindered and the institutionalisation of the arena remains in a low level.

In this framework, the expansion and consolidation of a common policy arena is thus seen as driven by the use of cross-border rules and the demand for new ones by transnational actors, and the correspondent supply of those rules by regional institutions. In the case of the labour arena, the most important cross-border rule by NAALC is the *effective* enforcement of domestic labour laws throughout North America. The agreement established a single regional institution to oversee and manage the implementation of this rule. Since the entering into force of NAALC a number of trade unions and non-governmental organisations have used this cross-border rule to seek change at the domestic level and resolve labour issues affecting their corresponding workplaces or sectors.<sup>133</sup>

Various scholars and policy analysts have deemed the NAALC and its Public Communications procedure as an ineffectual instrument, which lacks enforcement powers and whose significance and performance in the protection of labour rights and standards is very limited (see Isa, 1998; Compa, 1999; Besunsán Areous, 2007). Nonetheless, throughout this chapter, I have aimed to describe and explain the often-overlooked fact that NAALC created a common policy arena on

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<sup>133</sup> Although the NAALC also enabled individuals, employers or other private parties to participate in the policy arena, to this date none of them has used its provisions, at least on an individual basis.

labour rights and standards. I have argued that this agreement was not necessarily in the negotiation objectives of the national governments. Yet, the governments delivered it in order to secure the passing of NAFTA in their corresponding legislatures, especially in the US Congress as neither Mexico nor Canada were greatly interested in an agreement on labour matters.

In doing this, the national governments pursued and accomplished their primary and secondary national interests: they secured the passing of the agreement and avoided the creation of a strong ILO-like institution with broad powers to address labour issues in the region. To achieve these two objectives, the national governments cautiously bargained and carefully circumscribed the objectives and provisions of NAALC and the powers of the CLC, so that neither the agreement nor the institution would interfere with their sovereign power to regulate domestic labour issues.

Yet, I also argue that even if the provisions of the labour side agreement to NAFTA were not intended to contribute to the development of labour, they did so on a limited basis. Before the introduction of this agreement, an arena on the protection of labour rights and standards did not exist, as almost all matters were exclusively treated at the domestic level. In those cases where domestic labour and political institutions could not, or failed to address labour issues, there was no recourse for the intercession of other legal or institutional mechanisms to examine and address these matters. Those that existed at the international level, such as the International Labour Organisation, were subject to the will of the national governments to adopt, implement and supervise international labour standards. It is for these reasons that I conclude that the emergence of an arena on labour issues at the regional level was an innovative development, differentiated from the then-existing voluntary, non-binding international legal framework for determining, defending and advancing international labour standards.

The NAALC provided the North American public with a procedure for reviewing alleged failures by a North American country to comply with their own labour laws. The quasi-judicial provisions established for the submission of Public Communications fostered cross-border consultation, collaboration and support which has contributed to generating transnational relationships and commitments between workers, unions and other labour and social groups in

the three countries. “Whereas labour leaders in all three NAFTA countries predicted it would do little to promote labour rights in North America, NAALC did have one unexpected outcome –it stimulated and facilitated relationships among unions that then organised to collectively demand stronger labour rights protection in North America (including strengthening NAALC itself)” (Kay, 2011, p. 100).

It is the use, application, interpretation and, in some cases, modification of the common rules established at the regional level that I deem to generate policy interdependence. As I have claimed, the creation and functioning of NAALC shifted the behaviour –even if in a very small scale– of national governments and thus marginally furthered the integration process between these countries. In this sense, the most important outcome of the establishment and implementation of NAALC has been the mobilisation of regional mechanisms to prompt action in the domestic arena (Compa, 1999, p. 381).

In this process, however, I have assumed that national governments remain somewhat neutral and constant in their behaviour, i.e. they have not actively fostered nor hindered the action of transnational or regional actors. However, in the case of NAALC and the CLC, such actions have not remained neutral or constant. In the case of the labour side agreement and its institution, the national governments have actively opposed and taken steps to undermine the functioning and even continued existence of both mechanisms. For instance, as Aspinwall argues, “the level of funding for the CLC was always lower than that for the CEC” and the number of permanent staff working at the Commission was negligible even before its closure in 2010 (Aspinwall, 2013, p. 97). Moreover, in August 2010, “the Council [allegedly] directed the three NAOs to provide a report not later than February [...], 2011 with recommendations as to the form and nature of the operations of [a revised Secretariat], with the goal of establishing a consensus approach to improving” its functioning (CLC's Council, 2010). Yet, as of April 2014, there are no signs that it is going to be reopened in the near future.<sup>134</sup>

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<sup>134</sup> The limited funding and staffing of the CLC are “signs of weak commitment to labour issues at the trilateral level. Until its closure in mid-2010, the staff working for the CLC included an executive director, a director of administration and cooperative consultation, an executive assistant, a financial officer, a research director (vacant in

Despite these constraints, I argue that NAALC has ultimately broadened participation in this arena beyond state actors, promoted cross-border partnerships between workers and other labour activists, and expanded the number of actors who are subject to scrutiny for violation of labour rights. The sum of these actions has resulted in the expansion of the common policy arena.

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early 2010), a research specialist, and a cooperative activities specialist. The only other posts were three temporary positions. With only six permanent staff, there were obvious limits to its ability to contribute to capacity-building” (Aspinwall, 2013, p. 97).

# CHAPTER 8:

## CASE STUDY: THE COMMON POLICY ARENA FOR THE PROTECTION OF FOREIGN DIRECT INVESTMENT

## 8. CASE STUDY: THE COMMON POLICY ARENA FOR THE PROTECTION OF FOREIGN DIRECT INVESTMENT

### 8.1. INTRODUCTION

The proposal, negotiation and entering into force of the North American Free Trade Agreement's Chapter 11 have been widely analysed and discussed in the literature (see Rosa, 1993; Gantz, 1999; Dumbery, 2001; Brower, 2002; Jones, 2002; Kurtz, 2002; Aguilar Álvarez and Park, 2003; Staff and Lewis, 2003; Hart and Dymond, 2009; McRae and Siwiec, 2010). So far, scholars have analysed a number of different aspects of the Chapter. For instance:

- Its expected and actual economic and legal effects over the contracting countries;
- Its relation, role and importance vis-à-vis the rest of NAFTA;
- Its relation, role and importance vis-à-vis major multilateral agreements, such as GATT/WTO or OECD rules; or
- The effects of its settlement dispute procedure, among others.

So far, most scholars have also discussed the nature of Chapter 11 as an agreement inherently aimed at benefiting a particular group of transnational actors, i.e. companies and individuals in the US, Canada or Mexico wishing to invest in another NAFTA country. Few, however, have analysed the significance of Chapter 11's provisions to the process of regional integration in North America as a whole.<sup>135</sup> In other words, few have asked the question: is regional integration occurring in North America as a result of the entering and functioning of Chapter 11? Aiming to fill this gap in the literature, I examine the aims, structure, actors and institutions of NAFTA's Chapter 11. I explore whether it created a common policy arena on the protection of foreign direct investment and if so, whether that arena has been institutionalised. I do this in a three-part chronological sequence.

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<sup>135</sup> For a noteworthy exception see Jensen who discusses whether Chapter 11's dispute settlement mechanisms 'constitutionalise' NAFTA, that is, transforms an international agreement into a system of rules similar to a constitutional legal order (2011, p. 5). In her research, Jensen analyses the implications for the US, Canadian and Mexican legal systems of the arbitrations and decisions of Chapter 11's Arbitral Panels. Therefore, while relevant to the review of the current literature on Chapter 11, Jensen's analysis is not directly related to that of this thesis.



First, I describe the framework for cross-border investment existing in the region prior to the implementation of NAFTA, including the bilateral and multilateral agreements in place at the time. To do this, I discuss the objectives, provisions and institutions of the Canada-United States Free Trade Agreement's Chapter 16 and the General Agreement on Tariffs and Trade's (later World Trade Organisation), Agreement on Trade-Related Investment Measures. I argue that it was then that (limited) bilateral rules emerged between the US and Canada, while Mexico was bounded by some related (and more limited) multilateral rules.

Second, I describe the framework for cross-border investment established in 1994 through NAFTA's Chapter 11. Although I acknowledge that Chapter 11 is explicitly aimed at benefiting a specific group of transnational actors (foreign investors) I argue that its negotiation and implementation responded to the interests of the North American national governments in delivering an institutional and legal framework that would ease and increase the flows of trade and investment capital between their countries. Therefore, I argue that their negotiation and implementation are an instance of intergovernmental bargaining for the pursuit of the national interests of the North American governments. In this understanding, Mexico, Canada and the United States negotiated and agreed to establish Chapter 11 to secure the gains resulting from increased foreign investment in and between their countries.

Third, I advance the argument that Chapter 11 only partially created an arena on foreign direct investment in North America, inasmuch as it created cross-border rules but did not create a regional institution to manage such rules. Instead, the Chapter created a regional mechanism to arbitrate possible disputes related to the application of its provisions, through the action of extra-regional arbitration bodies, which relied on multilateral rather than on regional rules. Thus, I argue that while the Chapter is intended to operate as a separate agreement, it lacks the institutional structure to address the disputes that result from its use and application, thus constraining the expansion and consolidation of the arena. Therefore, although transnational actors have used, applied and interpreted the rules of Chapter 11, their actions have not expanded the arena. Further, the regional mechanisms used to arbitrate Chapter 11 disputes have

not responded to the demands of transnational actors nor expanded their functions, given that Chapter 11 circumscribed their responsibilities, adjudicatory capacities and jurisdiction, in favour of national institutions and international rules. For these reasons, I conclude that the actions of these mechanisms have not consolidated the arena.

I close by comparing Chapter 11 to the other regional agreements negotiated and established under the NAFTA bargain, the NAEEC and NAALC. Finally, I discuss the implications of the existence of a non-institutionalised common policy arena on foreign direct investment for the process of regional integration as a whole.

## 8.2. METHODOLOGICAL CONSIDERATION: CHAPTER 11 OR NAFTA?

Before proceeding, I will address the methodological question of whether Chapter 11 can be separately analysed from the rest of NAFTA. That is, it might be objected that Chapter 11 is not a side agreement, as the ones on the environment and labour, but an integral part of NAFTA.

In this respect, I would note that NAFTA is not the result of a single trilateral negotiation for the liberalisation of trade and investment in North America. Instead, it is the sum of previous bilateral trade agreements being revised and renegotiated; new trilateral rules aimed at opening trade and investment opportunities in the three countries; and country-specific issues and exceptions that were negotiated on a dual-bilateral basis. Because of this characteristic, NAFTA is the sum of a large number of rules on a wide range of trade and investment issues which despite their interrelatedness, have been generated in different contexts and regulate different aspects of the various exchanges taking place between Canada, Mexico and the United States. In brief, NAFTA is an agreement that incorporates various agreements.

This is manifest in the text of the Agreement itself. Each Part and Chapter regulates a different aspect of the trade and investment exchanges conducted among the North American countries. They separately outline the specificities of the day-to-day implementation and management of

each specific issue.<sup>136</sup> With 22 Chapters, NAFTA is a very broad agreement, of which Chapter 11 is only “a slice” (Thomas, 2001, pp. 64-65). Given that it does not significantly rely on other parts of the Agreement for its interpretation, application or administration, I argue that Chapter 11 constitutes a comprehensive instrument for the protection of foreign direct investment in North America, which can be separately analysed without compromising its integrity or comprehensibility. Therefore, I analyse and discuss the structure, actors, role and mechanisms of Chapter 11 as if it were a separate agreement.

### 8.3. BACKGROUND: THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR CROSS-BORDER INVESTMENT IN NORTH AMERICA BEFORE NAFTA

A set of rules governing cross-border direct investment at the trilateral level did not exist in North America before the implementation of NAFTA. Two reasons account for this circumstance. First, before the 1990s, the largest part of intraregional investment flows in North America was already structured by the Canada-US Free Trade Agreement (CUSFTA) and the General Agreement on Tariffs and Trade (GATT). Second, by the start of the 1990s, the value of intra-North American foreign direct investment (FDI), regulated by bilateral and multilateral agreements or otherwise, was small in comparison with the value of intra-North American trade.<sup>137</sup> Given that there was relatively little to be regulated, there was little demand for a regional set of rules on foreign direct investment.

The fact that the two major instruments regulating cross-border investment between the North American countries were the bilateral CUSFTA and the multilateral GATT/WTO's Agreement on Trade-Related Investment Measures (TRIMs) reflects much of the North American economic disparities and investment dynamics prevalent at the time. Given that, historically, the US has been the main source and destination of FDI in the world, the inward or outward flows

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<sup>136</sup> NAFTA is made up of eight Parts, unevenly separated into 22 Chapters. A Part is a group of Chapters covering a similar range of trade and investment issues.

<sup>137</sup> Intra-North American FDI refers to investment originated in either Canada, Mexico or the United States and being directed at one of the other two countries. In 1990, the value of intra-North American trade reached the 240 billion USD (Salvatore, 2007, p. 5) while the value of FDI amounted to as little as 6.9 billion USD (OECD, 2012).

of investment for Canada and Mexico to and from other North American countries prior to the 1990s have been comparatively small. The table below shows these disparities:

<b>TABLE 3.</b> <b>Intra-North American Inward Foreign Direct Investment in 1990</b> (in millions of US dollars)			
Investing Country	Reporting Country		
	US	Canada	Mexico
US	---	2,957	1,887
Canada	1,821	---	53
Mexico	224	NA	---

Source: OECD.Stat (2012)

A new agreement on investment did not emerge in the region before NAFTA for two reasons. First, CUSFTA had already limited or eliminated most of the US and Canadian domestic rules and requirements with restrictive and distorting effects on investment. Second, the TRIMs had eliminated, or were progressively phasing out, a large number of rules, requirements and barriers to investment with distorting effects over imports. However, even before the conclusion of the GATT/WTO negotiations, all the North American countries had eliminated, or were eliminating, most of these requirements in order to attract foreign direct investment (UNCTAD/WTO, 2006, p. 163). Therefore, the TRIMs did not constitute a breakthrough in the North American context.

For these reasons, the regional policy framework for cross-border investment remained much the same until the 1990s. While the expected increase in trade-related investment that would accompany NAFTA resulted in a demand for a broadened and enhanced set of rules, this new framework would build upon these two landmark agreements. The following section briefly reviews the rules on foreign investment of CUSFTA and TRIMs.

### 8.3.1. THE CANADA-US FREE TRADE AGREEMENT

CUSFTA was one of the two main instruments regulating cross-border investment in North America. As has been established, most of the trade and investment flows between the two countries had been already liberalised through circumscribed bilateral or multilateral agreements. Its main purpose in regard with investment was to create a predictable environment to conduct business and thus strengthen their competitiveness in the domestic and global markets. As established in its Chapter 16, CUSFTA promoted long-term US and Canadian private direct investment by:

- 1) Ensuring the accordance of national treatment for foreign investors with respect to the management and operation of their investments;
- 2) Eliminating performance or domestic content requirements as a condition for permitting an investment in their territories; and,
- 3) Circumscribing the prerogative of national governments to expropriate foreign assets.

Given the complex nature of foreign direct investment, and much like the mechanisms available in many other bilateral and multilateral agreements, CUSFTA also incorporated an arbitrating mechanism for the resolution of investment-related disputes. In this regard, CUSFTA was the first agreement in the North American context to incorporate as part of its settlement mechanism provisions for non-national investors to file a complaint against the host national government for alleged violations of the agreement. CUSFTA was the first agreement in the context of US-Canada relations and as such, it constitutes the precedent for the regional institutions of NAFTA. However, transnational actors, as well as the national governments of Canada and the US, had little time to engage with the provisions and institutions of CUSFTA. The agreement, which had entered into force in 1987, was superseded by NAFTA in less than seven years.

#### 8.3.1.1. THE DEFICIENCIES OF THE CANADA-US FREE TRADE AGREEMENT

Some of the provisions of CUSFTA compromised, rather than enhanced, the protection of foreign investors and their investments in the US and Canada. More importantly for the purposes of this thesis, I argue that CUSFTA did not create a common policy arena. In this regard, it could be claimed that Canada and the United States interacted with each other through intense cross-border direct investment and that both national governments had incentives and had taken steps to expand these exchanges, including the negotiation and implementation of CUSFTA. However, I contend that the agreement did not express the disposition of national governments to create and establish a set of *common* rules that enabled further investment in each other's territories.

First, much like other international agreements signed before the 1990s between North American countries, CUSFTA's main objective of creating a predictable, rule-based environment for foreign investors was subordinated to the maintenance of good diplomatic and economic relations between national governments. Throughout its text, the agreement established that the preferred method for the resolution of trade or investment disputes was conducting consultations rather than initiating an arbitration process based on the application of the relevant rules. This preference on intergovernmental consultations over cross-border rules included the actual or proposed implementation of any remedial measure by any of the Parties. Therefore, I argue that in CUSFTA, the maintenance of good relations between the two countries trumped the upholding of cross-border rules.

Second, the provisions of CUSFTA protected the interests of the national governments over those of their nationals and their investments abroad. I argue that the implementation, management and arbitration of the Agreement's Chapter 16, which related to the protection of foreign direct investment abroad, were fundamentally intergovernmental issues.<sup>138</sup> For these

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<sup>138</sup> For instance, if a foreign investor filed a complaint against Canada or the United States for alleged violations of the provisions of CUSFTA and an arbitrating panel was to be established, the national governments would still be the only actors sanctioned to address, resolve and implement the recommended solution to the dispute. Even in the very rare event that Canada-United States Trade Commission took a joint binding decision, the Parties would not have been compelled to implement the measure –even if this was at the expense of the investors affected. Per the

reasons, I argue that rather than protecting foreign investors and their investments, Chapter 16's provisions were subordinate to the interests of the Canadian and US governments and their economic objectives of strengthening domestic firms, reorganising cross-border chains of production and expanding their foreign markets.

Despite these shortcomings, from the implementation of CUSFTA but not necessarily because of it, FDI flows between the United States and Canada increased, even if only erratically and modestly.<sup>139</sup> Overall, CUSFTA had relatively little influence over changing patterns or further enhancing FDI trends between the two countries. While it could be argued that this marginal increase in investment flows resulted from the setting of non-tariff restrictions by the Canadian government, in fact, it is likely that a more balanced agreement would have also resulted in minor increases in bilateral FDI as most investment caveats had already been opened in earlier rounds of liberalisation.

### 8.3.2. THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

At the time of the negotiation and passage of NAFTA, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) was ending. The most important outcome of the Uruguay Round on investment issues was the implementation of the Agreement on Trade Related Investment Measures (TRIMs), which aimed at promoting more equitable conditions and competition between national and foreign investors and their investments in the territories

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agreement's provisions, if a Party considered that such measure affected its rights or benefits, it would have been "free to suspend" the application of the agreement to the other Party, until both countries reached a better resolution to the dispute (CUSFTA, 2012, p. 199). Furthermore, while CUSFTA fairly protected investors with respect to the establishment or acquisition of a business enterprise in the territory of another country, it did not adequately protect them in the conduct and operation of their business. In other words, CUSFTA did not fully guarantee the ability of investors to make an investment and, having made it, exercise control over it. This was specially manifest in Canada, who retained its foreign investment screening procedures and who imposed non-tariff restrictions on US investors and investments which were still larger than those imposed by the US on Canadian ones (Globerman and Walker, 1993; Mérette, et al., 2008). This imbalance in the openness of the investment environment did not result from an oversight on the part of the US negotiators. Quite the opposite, it was a deliberate concession from the US to Canada in order to secure CUSFTA, which was agreed as part of the bargain, thus supporting the claim of Liberal Intergovernmentalism that national governments negotiate with each other to secure mutual gains. However, these issues were still shortcomings on the alleged aim of the agreement to establish a predictable environment for Canadian and US investors to conduct business.

<sup>139</sup> Various scholars have argued that the impact of CUSFTA on the promotion of FDI was ambiguous, and that the measurement of its effects is problematic (Globerman and Shapiro, 2003; Cardarelli and Kose, 2004; Mérette, et al., 2008; Waldkirch and Tekin Koru, 2009, 2010).

of the GATT/WTO subscribing countries.<sup>140</sup> In this sense, the rationale for an Agreement on TRIMs largely overlapped with that of CUSFTA and then NAFTA. That is, it recognised that certain domestic policies and regulations regarding investment can restrict and distort cross-border trade and as such are considered incompatible with the realisation of a freer global trade system.

To achieve its goals, the Agreement on TRIMs required the contracting governments to uphold two basic commitments and to implement one measure:

- 1) To accord in their territories national treatment to investments –that is, not to apply measures that discriminate against foreign investments, such as the establishment of a domestic content regulation that might be used as a substitute for tariff protection;
- 2) To eliminate any quantitative restriction to investments in their territories –that is, not to restrict the importation or exportation by an enterprise of products in terms of a proportion of volume or value of its local production; and,
- 3) To establish a Committee on Trade-Related Investment Measures under the GATT/WTO framework to monitor the operation and implementation of the Agreement.

Just as in CUSFTA, should these commitments not be upheld, the Agreement on TRIMs provided a dispute settlement procedure, which was part of the general procedure for GATT/WTO-related disputes rather than specific to TRIMs-related disputes. While the Agreement on TRIMs can be seen as a significant milestone in the protection of foreign direct investment worldwide, I argue that, just as with CUSFTA, it fell short of providing a comprehensive framework for the protection of foreign investors and their investments.

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<sup>140</sup> TRIMs are defined as measures employed by a country to compel or to induce multinational enterprises to perform in a certain way, such as directing certain amount of their production to exports, keeping their imports under a given ratio to their exports or meeting certain domestic content quotas.



#### 8.3.2.1. THE DEFICIENCIES OF THE AGREEMENT ON TRIMS

As originally proposed, the TRIMs Agreement would have been a global Agreement on Foreign Direct Investment, addressing and ensuring the rights of establishment for foreign enterprises, national treatment for foreign investments and incentives in the GATT/WTO subscribing countries. Yet, even before the final text of the agreement came out, it was evident that such an agreement would not be agreed upon under the GATT/WTO framework, mainly because the Agreement on TRIMs was regarded as an ineffective framework for the protection of foreign direct investment. This view was based on the following reasons:

First, while all countries would benefit from the subscription to and implementation of the agreement, the costs of implementing the agreement were not evenly distributed. Given that the cost for a country of liberalising FDI controls was directly proportionate to the expected gains from the implementation of the agreement, those countries most likely to benefit from a rise in inward investment were also the ones assuming the highest implementation costs.

Second, the objective of the Agreement of facilitating investment across national borders is fundamentally impaired by the possibility of a contracting party not carrying out its obligations under the Agreement. In most agreements, this problem is resolved through the setting of an oversight body and a dispute settlement mechanism with eventual penalties in the case that a country fails to fulfil its commitments. Yet, the Agreement on TRIMs did not effectively provide these facilities. On the contrary, it relied on self-reporting and self-enforcement, and in cases of failure, it provided exemptions for its provisions and the fulfilment of its provisions.

Third, the Agreement did not protect foreign investors but nation-states. Just as in most international agreements, the only contracting Parties to the Agreement on TRIMs are the signatory nation-states. As such, they are the only actors able to fulfil and uphold its provisions and raise a complaint regarding the failure of another Party to do so. Only national governments (acting on behalf of their nation-states) have the ability to denounce damages from the actions (or lack thereof) of other Parties to the Agreement in question. Yet, unlike trade controversies,

most investment-related disputes, involve a single foreign firm or investor and a subnational government rather than a national government (Graham, 1996, p. 212; Che and Willmann, 2009, p. 1). Thus, in cases where a party fails to fulfil its commitments the affected parties are not nation-states as a whole, but rather individual firms. However, given that under the Agreement on TRIMs, only national governments can file a claim or request the settlement of a dispute, this circumstance turns into a deficient protection for investors.<sup>141</sup>

Finally, even in those cases where such claims were filed efficiently and promptly, the agreement did not establish an adequate enforcement mechanism or provide adequate remedial action. Instead, it was expected that disputes would be resolved through consultations between the countries involved or mediated under the WTO Dispute Settlement Mechanism, which was a prolonged, non-specific process in which filings could take up to thirty-five months to be resolved by an evaluating Committee with no meaningful oversight capacities (WTO, 2012). Since it was expected that most disagreements would be solved through either of these mechanisms, the agreement provided limited remedial measures.<sup>142</sup>

For these four reasons, the North American countries regarded the Agreement on TRIMs as a limited and ineffective framework for the protection of FDI. For the US, which preferred the imposition of the least restrictions on incoming and outgoing foreign direct investment, and for Canada and Mexico, which aimed to attract more US investment, the rules of the 1994

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<sup>141</sup> Although in principle, domestic laws and international agreements might offer foreign investors the opportunity to request help from their home governments to file a dispute at the GATT/WTO, in practice, a number of factors determine whether a national government resorts to arbitration on behalf of an investor (Peterson, 2010, p. 3). For instance, the nature, scale and monetary value of a controversy, the investor's interest in continuing to operate in the host country in case of a negative outcome the arbitration, among others. Ultimately, this risk diminishes the incentives for foreign investment, as investors have to ponder the costs of a possible delayed or ineffective action –or even inaction– of their home governments to initiate a dispute.

<sup>142</sup> In these cases, the only resources available to the Parties to ensure the upholding of its provisions were the nullification or impairment of its provisions for non-compliant countries. As Busch and Reinhardt affirm, the GATT/WTO acted as a 'court with no bailiff', where rulings on disputes were unlikely to end with full or partial satisfaction of the complainant's initial demands (2000, p. 159). Busch and Reinhardt examine the reasons for which the vast majority of GATT/WTO disputes "end prior to panel ruling, and most of these without a request for a panel even being made" and instead favour settlement of disputes in "relatively less transparent" settings (2000, pp. 159,171). NAFTA's Chapter 11 aimed at preventing and ending this opaque practice.

GATT/WTO Agreement on TRIMs were inadequate to promote increased flows of foreign direct investment.<sup>143</sup>

#### 8.4. THE CREATION OF THE COMMON POLICY ARENA

In sum, it can be said that a framework for cross-border investment existed in North America before the establishment of Chapter 11 through the operation of CUSFTA and the Agreement on TRIMs. Yet, this framework constituted a patchwork of deficient rules on FDI rather than a comprehensive regional framework for investment. Given the close relation between CUSFTA, TRIMs and NAFTA, some authors have argued that the latter only reiterated or further strengthened the text and provisions of the former agreements (see Taylor, 2000; Freeman, 2009). Others have argued that Chapter 11 merely underpinned at the regional level the treatment already accorded to foreign investors elsewhere (see Mann and Von Moltke, 2002). Finally, other authors have argued that Chapter 11 only came to provide the North American countries with another choice amid the range of alternatives they already had at the international level for the resolution of investment-related disputes (Gantz, 1999, p. 1026).

These scholars, however, overlook the fact that in comparison with previous agreements, Chapter 11 created a cross-border legal framework with well-defined procedures for the protection of foreign direct investment administered by a stable institutional architecture that did not previously exist in North America.<sup>144</sup> While I would agree that it is important not to overstate the significance of this development, it is the case that the rules established in Chapter 11 have a quasi-supranational, judicial nature that goes beyond the limited dispute review mechanisms and non-enforceable provisions of previous agreements, such as CUSFTA and the Agreement on TRIMs. This legal framework established an arbitration mechanism that enables individuals and other non-state actors to contest the actions of sovereign states. The establishment of such a system resulted in the creation of two important cross-border rules: the

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<sup>143</sup> In the case of the United States, the agreement even afforded less protection to foreign investors than the rules that had been set by CUSFTA –of which juridical personality of firms and national treatment of investors and their investments were crucial components (Wallace, 2002, p. 383).

<sup>144</sup> In this chapter, legal is defined as “rules that are generally followed and may be subject to coercive enforcement” (Westbrook, 2008, p. 349), rather than written laws enforced by domestic courts.

accordance of national treatment to foreign investors in North America and the non-interference of national governments with the management and operation of foreign investments in their territories.

Therefore, I maintain that Chapter 11 entailed not simply the expansion of existing agreements, but the creation of rights for transnational actors and obligations for national governments (i.e. cross-border rules), as well as the implementation of an arbitration mechanism to uphold these entitlements and commitments. In this sense, Chapter 11 was a significant development in the institutional framework for the protection of foreign direct investment in North America. As explained in previous chapters, Chapter 11 created a common policy arena, which is an institutional framework for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues, in this case, on foreign direct investment. This arena is created as a result of a deliberate decision of nation-states to expand their economic interdependence. This decision responds to the rational choices made by national governments, which consistently pursue national economic interests, and which aim to enable further economic interaction between their countries through the establishment of cross-border rules. In the next pages, I examine the commitments, obligations and rights that Chapter 11 created, before discussing their significance to the correspondent arena, as well as its institutional deficiencies –the most important of which is the failure to establish a stable institutional architecture to manage its provisions.

#### 8.4.1. THE CROSS BORDER RULES OF THE COMMON POLICY ARENA

Chapter 11 is an extensive and very specific instrument when it comes to laying out the commitments and obligations of its Parties. It carefully spells out the various obligations of the North American governments with respect to the treatment of foreign investors and investments, the rights of such investors, the procedure for settling disputes between the Parties and investors, and the exclusions on the applicability of its provisions. Given that the detailed analysis of each one of these articles would go beyond the scope of this chapter, and in fact can

be found elsewhere in the literature (see Jones, 2002), I will only focus on the analysis of the following aspects of Chapter 11:

- The commitments and obligations of the national governments with respect to investors and investments from other NAFTA countries;
- The rights of foreign investors with respect to the management of their investments;
- The institutions related to the management and operation of Chapter 11; and,
- The procedural rules for arbitration in cases of investment disputes.

#### THE COMMITMENTS AND OBLIGATIONS OF THE NATIONAL GOVERNMENTS

The Parties established a series of commitments to ensure that foreign investors are accorded a fair treatment amidst a predictable environment for business. The Chapter reiterates the treatment recurrently accorded to foreign investors elsewhere, and then provides them with new rights that are specific to NAFTA. In other words, the further one goes into Chapter 11, the more limited to the North American context the application of its provisions becomes. These commitments and obligations are:

- 1) According national or Most-Favoured-Nation Treatment (MFN) to each other's investors and investments, whichever is better (Article 1103),<sup>145</sup>
- 2) Not imposing on investors conditions related to the performance and management of their investments (Articles 1106 and 1107); and,
- 3) Refraining from nationalising or expropriating an investment or taking measures 'tantamount' to nationalisation or expropriation (Article 1110).

It is important to note that the contracting parties to Chapter 11 are the national governments of the US, Canada and Mexico. However, its provisions are also intended to protect foreign investors from the actions, decisions or omissions of provincial and state governments for which these nation-states are responsible for in terms of international law. Also, given the fact that the

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<sup>145</sup> Most-Favoured-Nation treatment (MFN) is a principle of international trade established in the GATT/WTO agreements, which requires trading partners to treat each other equally. This means that if a country grants another a special treatment, it has to do the same for all other WTO members. In the NAFTA context, it entails that national governments agree to maintain a level playing field between their national investors and investments and those of other NAFTA countries, and accord to investors of another NAFTA country treatment no less favourable than that they accord to investors of any other Party or non-Party to the Agreement.

term investment is broadly defined in the Agreement, most foreign direct investments are covered by its provisions, and thus bind the national governments to their protection.

#### THE RIGHTS OF FOREIGN INVESTORS

Although Chapter 11 did not explicitly create rights for foreign investors, the Agreement did create a new regional rule on foreign investment that closely resembles a private right for this specific group of transnational actors: not having an investment actively hindered by a national government. The emergence of this rule was not unintended. The negotiation and implementation of Chapter 11 resulted from the interest of national governments in increasing FDI flows and, to a lesser extent, from the demands of risk-averse individual investors and firms for a framework that ensured the protection of their investments in other North American countries. Therefore, its inclusion responded to both the interests of national governments and the needs of a specific group of transnational actors.

I argue that even if the right is not explicitly stated, the rule is well defined in Chapter 11. Its intent is to provide certainty to foreign investors that the governments will not interfere with the establishment, acquisition, management, and general operation of their investments. Therefore, except for a few measures related to the environmental and health protection, the governments are precluded from taking any arbitrary or unjustifiable action that may constitute a restriction on international trade or investment (SICE, 2013). Furthermore, Chapter 11 defines the transnational actors who are protected by the rule –or right. Such a group comprises individuals and firms from any of the three North American countries who are making or have made an investment in the territory of another North American country. This includes individuals and firms from other countries, as long as they reside or are incorporated, respectively, in a North American country and are making or have made an investment in the territory of another North American country.

#### 8.4.2. THE REGIONAL AND NATIONAL INSTITUTIONS OF NAFTA AND THEIR RELATION WITH CHAPTER 11

NAFTA established an institutional framework to administer and supervise the implementation of its provisions, address issues and resolve disputes that may arise among the Parties regarding the interpretation or application of its text. This framework is formed by two institutions: the Free Trade Commission (FTC) and the NAFTA Secretariat.

The FTC is an administrative body formed by the ministers responsible for international trade in each of the three countries. The FTC is charged with just one task in relation to Chapter 11: reviewing its operation to clarify, and reaffirm the meaning of, its provisions. Although this is effectively the only responsibility of the FTC in relation to Chapter 11, I argue that it is important as it gives the Commission authoritative power over the disputing actors located in two different national jurisdictions and governed by different two different nation-states. The other important body in relation to Chapter 11 is the NAFTA Secretariat. Per the agreement, the Secretariat should be an institution in itself, comparable to those of the CLC and CEC. Yet, the Secretariat effectively operates through three separate quasi-subsidary administrative offices called National Sections, in a very similar way to the National Administrative offices of the labour agreement.<sup>146</sup> Each National Section is headed by a Secretary designated by its own government, in effect operating as a representative of the corresponding nation-state.

Through the description above, the division of responsibilities of the institutions is somewhat clear. However, in its day-to-day administration, this division is not as clear-cut. While the administration of Chapter 11 is entrusted to the National Sections its interpretation, implementation and further elaboration is assigned to the Free Trade Commission. Yet, dispute resolution, which is a key aspect to any trade agreement, is not part of the responsibilities of any of these institutions. Instead, these responsibilities are assigned to a Tribunal and, possibly, an Arbitral Panel, which are the non-permanent, non-subsidary bodies of Chapter 11. In my

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<sup>146</sup> According to McRae and Siwiec, this was not the way in which the Secretariat was expected to operate. As originally proposed and negotiated, it would have had similar attributions and responsibilities to the CEC's and CLC's Secretariats. However, due to the US failure to provide funding, the institution was never formally established and instead the National Sections took their place, functions and responsibilities (2010, p. 380).

theoretical framework, these bodies would represent a part of the regional institutions, much in the same way that the Evaluation Committees of Experts and the Arbitral Panels did in the labour agreement. As will be shown, however, they do not fully correspond to the bodies of the side agreement on labour, mainly because they operate outside the regional framework of NAFTA. I thus argue that their operation not only uneasily divides the responsibilities of the institutions dealing with the management of Chapter 11, but that it undermines regional rules in favour of multilateral dispute resolution mechanisms.

#### 8.4.3. THE TRIBUNALS AND ARBITRAL PANELS OF CHAPTER 11

While Chapter 11 did create permanent institutions to administer, interpret, implement and further elaborate the rules on foreign direct investment, it did not establish permanent institutions to arbitrate the disputes that could emerge from the use of such rules. Instead, the Parties agreed to establish an impartial tribunal that would deliberate in accordance with the rules set out in existing multilateral mechanisms under the principle of international reciprocity. In other words, the Parties agreed to establish the rules that govern cross-border foreign direct investment, but they decided not to establish the corresponding institutions to arbitrate the disputes that could emerge as a result of its application.

Thus, although Chapter 11 is formally more extensive than, for instance, the GATT/WTO dispute resolution mechanism, it is considerably less extensive institutionally. While the GATT/WTO has both a standing dispute resolution and an appellate body, Chapter 11 relies in the operation of non-permanent, non-subsidiary bodies. Instead, to arbitrate disputes, the signatories decided to rely on legal frameworks outside the structure of the Agreement. Namely, the International Centre for Settlement of Investment Disputes (ICSID) and the Convention and Additional Facility Rules of the United Nations Commission on International Trade Law (UNCITRAL). Both mechanisms predated NAFTA and had been used to conciliate and arbitrate international trade-related investment disputes.<sup>147</sup>

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<sup>147</sup> Although the ICSID, founded in 1966, is the leading international arbitration institution devoted to investor-State dispute settlement, it was not until 1990 that it first arbitrated an investment treaty case (ICSID, 2012, p. 5).



The Chapter 11 dispute resolution mechanism thus works in this manner: if an investor in any of the NAFTA countries considers that a Party to NAFTA has breached its obligations under Chapter 11, they may file a claim before the relevant National Section. The disputing parties first attempt to settle the claim through consultation or negotiation. If the matter is not addressed or solved in the next six months, the submitter can request its claim to be arbitrated by an ad-hoc NAFTA Tribunal. The investor then decides under which rules the dispute will be arbitrated: ICSID, the UNCITRAL Convention or the UNCITRAL Additional Facility (Article 1120). In practice, given the states' variable participation in these bodies, there are only two sets of rules available to investors to arbitrate a dispute. Once the disputing investor has decided which rules will be used for the arbitration, they must notify the disputing Party of its intention to submit a claim. After receiving such notification, and if the matter is not resolved, both parties must consent to the arbitration of a NAFTA Tribunal.

In contrast to the North American Agreements on Environmental and Labour Cooperation, Chapter 11 does not require submitters to resort to and exhaust domestic proceedings to address and resolve the dispute. The only conditions that it imposes on claims for arbitration are to establish that a Party has breached its commitments or obligations under the Agreement and that such a breach has resulted in a loss or damage of the investor's investment (Article 1121). Once a claim is filed, Chapter 11 rules out the right of the complainants to initiate or continue any proceeding before any administrative domestic tribunal relating to the issue at hand. In other words, the establishment of a NAFTA Tribunal precludes submitters from returning arbitration to a domestic court, making the final decision of the Tribunal binding (Article 1122). Once established, the Tribunal examines and decides on the dispute in accordance with NAFTA and "applicable rules of *international law*" (NAFTA Secretariat, 2013).<sup>148</sup> Chapter 11 only stipulates that the decisions of the Tribunal must be in accordance with NAFTA's intent on the promotion of cross-border investment.

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Therefore, it would not be possible to argue that the national governments favoured the use of the ICSID rules due to the experience of the institution in handling investment disputes.

<sup>148</sup> Chapter 11 goes no further on the determination of the responsibilities of the Tribunal, the way in which it is expected to act or whether it must reach a final decision or not on the dispute. All these issues are left to the Tribunal itself to decide.

Even if the arbitration itself is left to the Tribunal to decide based on international rules, Chapter 11 does cover the final stage of the arbitration process: the implementation of the final award. In the case that the Tribunal decides against one of the Parties to NAFTA –i.e. the national governments of Canada, Mexico and the United States– the decision is binding and enforceable. The final award may constitute the payment of monetary damages and any applicable interest to the investor and/or the restitution of their property.<sup>149</sup> Under the provisions of the Agreement, the Parties are to provide for the enforcement of the award in their jurisdiction. The Tribunal is then disbanded and its final decision is only binding between the disputing parties and in respect to the particular case. This means that its actions and decisions are specific to the resolution of the case at hand and its rulings cannot guide decisions on other possible disputes.

#### 8.4.4. THE ACTUAL FUNCTIONING OF THE REGIONAL RULES AND THE REGIONAL BODIES

From the description above, the rules of Chapter 11 might appear as highly detailed and well structured. However, I argue that they are not substantive inasmuch as they are only administrative and procedural. Instead, the most important mechanism to uphold them, i.e. the arbitration of possible disputes, is left to a Tribunal that functions and adjudicates based on international rules of ICSID or UNCITRAL rather than regional ones. In other words, the cross-border rules only outline the process through which investors may file a claim, while the arbitration is entirely conducted under extraregional rules through a non-subsidary body. In the context of my theoretical framework, Chapter 11 thus does not represent a complete regional framework as disputes resulting from the use, application and interpretation of the regional rules are arbitrated by extra-regional bodies. In addition, these bodies are temporary in existence and are precluded from creating precedent for future action. Further, tribunals are precluded from interpreting Chapter 11 or NAFTA as this is only a prerogative of the Free Trade Commission.

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<sup>149</sup> In practice, the payment of monetary damages and applicable interest is preferred to the restitution of property.

Finally, national governments themselves must implement the final ruling of the ad hoc quasi-regional Tribunal, which then tells us that the regional institutions that do exist are redundant.<sup>150</sup>

I argue then that the provisions of Chapter 11 effectively put the national governments in charge of most of the arbitration procedure. National governments have their interests represented by two different institutions at three different moments in the use, application, interpretation and modification of the rules. The first is at the beginning of the process through the National Sections, when transnational actors first engage with the institution. The second is in cases where the FTC is asked or needed to interpret the Agreement, as trade ministers only convey the interpretation of their own national governments of the NAFTA provisions rather than reaching consensus on the actual meaning and intention of the rules. The third is when the national governments themselves implement the final ruling in their own jurisdiction. As Kaufmann-Kohler puts it, “the difficulty here lies in the [three] hats worn by the States”: as gatekeepers of the cross-border rules, revisers of such rules, and implementers of the rules (2011, p. 192). I argue that this makes the regional bodies –and even the National Sections– redundant.

Consequently, the only role that Chapter 11 provides for the permanent regional bodies –and specifically the Free Trade Commission– is to interpret its rules when Tribunals fail to understand the ‘appropriate’ meaning of the text on which they are expected to deliberate (Grierson-Weiler, 2008). “In theory, if all three trade ministers agree that a NAFTA provision should be interpreted in a certain way, tribunals must obey them –no matter how far that interpretation may stray from the appropriate [or intended] meaning of the text” (Grierson-Weiler, 2008). However, in practice, it is not expected that the trade ministers will ‘interpret’ the provisions of NAFTA in a way that significantly differs from the intention of the national governments. Therefore, apart from the unlikely use of this power, I argue that neither the Free Trade Commission nor the NAFTA Secretariat play any significant role in the arbitration of Chapter 11 disputes.

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<sup>150</sup> I refer to the Tribunal as ad hoc and quasi-regional due to the temporary nature of its existence and the fact that only two out of the three North American countries are represented and must participate in the arbitration.

All of this effectively means that when it comes to arbitrations, Chapter 11 favours the use of multilateral mechanisms and international rules over that of regional ones. It also opts for the establishment of temporary Tribunals and Arbitral Panels over the creation of a permanent adjudicatory body in charge of administering, ruling and arbitrating over the operation and implementation of Chapter 11. Finally, it also puts the national governments in control of most of the arbitration procedure, thus leaving little opportunity for transnational actors or regional bodies and institutions –ad hoc or otherwise– to use, improve and further the cross-border rules established by the Chapter. So again, in the theoretical framework I propose, this represents an instance of the failure to establish regional institutions that can entirely manage the cross-border rules. I argue that these characteristics of the dispute resolution mechanism have in turn prevented the expansion of the arena.

#### 8.5. THE FAILURE TO EXPAND THE COMMON POLICY ARENA

To further support this claim about the failure to expand the arena, in this section I analyse three instances in which investors used the provisions of Chapter 11 to seek arbitration and solution to disputes arising from their operation and investments in the territories of other North American countries. In doing this, I aim to demonstrate that the non-existence of regional rules for arbitration and the aforementioned limitations of the regional bodies have resulted in a poor use of the cross-border rules on foreign direct investment and in a lack of expansion and consolidation of the correspondent arena.

Although transnational actors have increasingly interacted across borders, in this case investing in the territories of other North American countries, it cannot readily be claimed that such increased interaction has resulted from the use of the rules of the arena. For the most part, domestic policies on foreign direct investment had already been liberalised in Canada, Mexico and especially the US before the entering into force of NAFTA. Then, the rules of the arena were only aimed at ensuring the economic certainty and legal transparency of such investment. In other words, Chapter 11 did not aim to structure a common policy arena on foreign direct investment, but rather a common policy arena on the *protection* of such investment(s). Even

then, it did so only through the establishment of non-permanent regional bodies that merely apply international rules to arbitrate cross-border disputes. Further, transnational actors have faced difficulties in understanding and applying these rules. Through the analysis of the following cases, I explain why and how these hindrances have prevented the expansion of this arena.

#### 8.5.1. THE 1996 METALCLAD CASE

The significance of this case stems from it being both the first case to be arbitrated under the provisions of Chapter 11 and its status as an (almost) prototypical foreign investment dispute –the kind of foreign corporation versus national government– that the negotiators and drafters of NAFTA expected to be arbitrated under Chapter 11. As I explain below, the fact that *Metalclad v. Mexico* was the ‘close-but-not-quite perfect’ textbook case that the negotiators and drafters of Chapter 11 expected made its resolution more complicated. First, the claiming foreign company was not a multinational corporation with significant economic and legal means to engage and succeeded in an international arbitration, but a small US company that had made its first foreign direct investment in Mexico. Second, the respondent was not only a national but also a state government. The fact that the events that gave rise to the dispute predate the implementation of NAFTA further complicates the case.

In August 1993, the US waste disposal company Metalclad Corporation bought from the Mexican waste-management company COTERIN a site in Guadalcázar, State of San Luis Potosí, Mexico. COTERIN had operated the site, known as La Pedrera, and illegally stored toxic waste there. This led the Guadalcázar municipality to close down La Pedrera and order the company to clean-up the site. The US-based Metalclad Corporation entered the Mexican toxic waste management market and acquired COTERIN. This transaction included the handover of La Pedrera. Metalclad asked the Mexican federal and state governments for permission to re-open and expand the toxic-waste landfill, in exchange for cleaning up the site and investment in a new facility (DePalma, 2001). The federal and state governments agreed to the deal and

granted Metalclad the operation and land use permits, while the municipal government conditioned the granting of the construction permit on the completion of the clean-up.

Ignoring this condition, Metalclad started the construction of the new facility. In light of this, the municipal government took action to halt the construction of the facility, but without success, as it did not have jurisdiction over the facility, given that toxic-waste management is a federal and not municipal responsibility. The state authorities, which had previously favoured the construction of the facility, reversed their decision and agreed to close down the site permanently. To do this, they put forward a request to the federal government to conduct an environmental impact audit of the site. Despite the opposition of the municipal and state governments and their populations, the federal government signed an agreement with Metalclad to re-open the toxic-waste landfill, including its new facility. The municipal and state governments opposed the agreement. Therefore, to force the company and, most importantly, the federal government into addressing its concerns, they impeded the re-opening of the site.

By this time, Metalclad had been unable to operate the site for almost two years. Although, Metalclad and the State government attempted to resolve the issues affecting the operation of the landfill, they were unsuccessful and the site remained closed. Given that the company was still attempting to re-open the site, on September 1997, the State Governor declared the creation of a State Reserve (i.e. a nature protection area) in Guadalcázar. This status precluded the undertaking of activities that could potentially damage the environment, thus permanently preventing Metalclad from operating the site and definitely cancelling any possibility of opening the industrial waste landfill (ICSID, 2000, p. 18).

#### THE USE OF RULES BY TRANSNATIONAL ACTORS AND THE RESPONSE OF REGIONAL INSTITUTIONS

In December 1996, Metalclad filed a notice of intent with the Mexican National Section to initiate arbitral proceedings against the Government of Mexico and the State of San Luis Potosí. The firm argued that Mexico's *municipal and state* authorities had obstructed any

possible solution to the issue, and therefore the *national and state* governments had violated the investor-protection provisions established in Chapter 11.<sup>151</sup> According to Metalclad, Mexico had wrongfully refused to permit its subsidiary to open and operate the facility that the company had built in La Pedrera. In the view of the claimant, the authorities' actions constituted a direct and indirect expropriation of Metalclad's investment. The company claimed that such taking was 'unlawful' under NAFTA's Article 1120 and international law and therefore, it sought compensation for damages in the amount of USD \$43 million (Pearce and Carvajal Isunza, 2001, pp. 5,6).<sup>152</sup> As provided by Chapter 11, the complainant requested the arbitration to be undertaken under the provisions of the ICSID Additional Facility Rules.<sup>153</sup>

In January 1997, the Mexican National Section, which again, is the body charged with administering the agreement, accepted the claim for arbitration. Hearings were scheduled for August 1999. Given that this was the first investment dispute to be arbitrated under NAFTA/ICSID rules, "the Tribunal encountered and dealt with a number of novel procedural issues" (Escobar, 2000, p. 2). First, it had to determine the place of arbitration. To ensure the fairness and enforceability of the final award, the ICSID determined that the arbitration would take place in Vancouver, Canada, thus favouring a trilateral solution to a regional issue. Second, after reviewing the investor's claim and its memorial of the events, the Tribunal was uncertain that the actions taken by the state and municipal governments had constituted an expropriation of the investment as provided in Chapter 11. In this respect, the Tribunal benefited from submissions made by Canada and the United States, providing their interpretation of the agreement's provisions (Escobar, 2000, p. 2). It is important to note that in this case the Free Trade Commission was not requested to interpret the Agreement. Instead, two out of the three national governments provided their particular views on how that specific provision should be

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<sup>151</sup> The alleged failures included but were not limited to: not according national treatment to foreign investors; not according a minimum standard of treatment consistent with international law; imposing requirements or enforcing commitments in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment; and, nationalising or expropriating foreign investments without the payment of compensation.

<sup>152</sup> The figure was later increased to USD \$90 million to pay for related damages, arbitration costs and the interest on these amounts.

<sup>153</sup> In this case, Metalclad resorted to the ICSID's Additional Facility Rules that allow investors nationals of a Contracting Party to have a dispute with a non-Contracting government conciliated and arbitrated by the ICSID, should the non-Contracting Party consent to the ICSID deliberation.

interpreted (see Bettauer, 1999; Escobar, 1999).<sup>154</sup> This pronouncement did not adhere to the provisions of Chapter 11's Article 1131, which required the Free Trade Commission to interpret the Article, thus indicating a preference for the action of national governments over that of the regional institutions.

Both governments agreed, to different extents and for different reasons, that Metalclad had incorrectly used and applied the term 'expropriation' as established in Chapter 11. The US considered that the claimant was seeking payment of damages for actions beyond those provided by NAFTA (Bettauer, 1999, p. 5). Meanwhile, Canada adopted the view that the company had applied the legal language of the United States to a NAFTA dispute (Escobar, 1999, p. 1). In the view of Canada, Chapter 11 had not been intended to be a mere recapitulation of the laws on investment protection of one of the Parties and thus refused to apply the legal terms of the US on to NAFTA dispute. In sum, both national governments upheld and improved the regional rules through the clarification of their content. Finally, and just as important as the interpretations, the national governments deliberated over whether the provisions of Chapter 11 were applicable to municipal governments. This was a ground-breaking development for the Agreement as it required the determination of whether the actions of local governments, including municipalities, are subject to the obligations and commitments under NAFTA and thus to the provisions of Chapter 11. It is important to note that Chapter 11's Article 1102 omitted (or at least had not made explicit) whether municipal-level governments are bound by the provisions of Chapter. This omission proved very relevant in the dealings of the Metalclad case.

Once again, the FTC was not called to interpret the provisions of NAFTA. Instead, the national governments themselves interpreted the agreement. The US maintained that the actions of local governments, including municipalities, were indeed subject to NAFTA's provisions (Bettauer, 1999, p. 2). Although the United States acknowledged that no statement had been made in

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<sup>154</sup> Despite a thorough search, I have been unable to determine whether Mexico provided an interpretation of Article 1110 of Chapter 11 in the form of a Submission. It is possible that because the Mexican National Section was the administrative body that accepted the claim and the government of Mexico was the Party complained against, the federal government did not provide its view on the interpretation of the Article.



NAFTA on the responsibilities of local governments, it claimed that the ‘natural meaning’ of these provisions, taken together, is that the reference to states and provinces in the Agreement also included local governments. What the US intended, “and it believes the other Parties intended” was that the actions of local governments would be subject to the provisions of NAFTA and its Chapter 11 (Bettauer, 1999, p. 2). Despite being the respondent, Mexico agreed with this view. The position of the government was that Mexico remained prepared to proceed on the assumption that the normal rule of state responsibility applies. This is that the government of Mexico is responsible for the acts of all its three levels of government (Perezcano Díaz, 1999, p. 46). Although Canada did not pronounce on the issue, it did not oppose the interpretations of the US and Mexico either. Therefore, both national governments improved the regional rules, by clarifying and making them applicable to a level of government that had been technically omitted in the original text of NAFTA.

Having addressed these matters, the Tribunal held the hearings in August and September 1999, with a decision coming roughly a year later. Based on the interpretations of the national governments, the Tribunal decided that the provisions of the Agreement were indeed applicable to the local governments, including municipalities. Therefore, Mexico was responsible for the acts of San Luis Potosí and Guadalcázar. The Tribunal found that there had been numerous deficiencies in the denial of such permit. The most important of them was that the municipal government had exceeded its competences when it denied the permit based on concerns regarding the effect and impact of the site on the environment and surrounding communities (ICSID, 2000, p. 26).<sup>155</sup> Meanwhile, the State government had created a Reserve that effectively barred the operation of the landfill. This decision had been aimed at preventing the undertaking of any activities within the area, which included La Pedrera site, and while this action was, in and of itself, an act tantamount to expropriation, the State government failed to compensate Metalclad. On this basis, the Tribunal concluded that Mexico had violated the

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<sup>155</sup> In no way was this concern ignored or affected by NAFTA, which acknowledges the prerogative of the Parties to ensure that investments made in their territories are made in a manner sensitive to environmental concerns. Yet, according to domestic law, such evaluation was a federal prerogative exclusively. Therefore, the municipality of Guadalcázar had overstepped its authority.

provisions of NAFTA's Chapter 11. It also concluded that the country had failed to ensure a transparent and predictable framework for Metalclad's investment.

Yet, the Tribunal did not totally side with Metalclad. While it accepted that the company had completely lost its investment, it also deemed that the company had overestimated the cost of its losses and damages caused. In addition, while it agreed that Mexico would have to pay interest on the amount of compensation, the Tribunal significantly reduced the percentage of interest and length of time for which such payment of interest could be requested. In August 2000, in what constituted the first ruling to be made under the provisions of Chapter 11, the Tribunal finally awarded Metalclad almost USD \$16.7 million in damages –less than half of the alleged cost of its investment in San Luis Potosí and about a fifth of the payment of damages that it had originally requested.

#### THE EFFECT ON GOVERNMENTAL ACTORS

The federal government, which is the Party to NAFTA in Mexico, accepted the claim and arbitration of the NAFTA Tribunal. Yet, despite the findings of the Tribunal, on October 2000, the government challenged the decision and final award in its entirety before the Supreme Court of British Columbia. Although the Court upheld the findings of the Tribunal, Mexico did successfully challenge one key element.

Specifically, the government of Mexico contended that the Tribunal had exceeded its jurisdiction when it incorrectly read and incorporated transparency requirements into Chapter 11, which were not present in the original text (Faynblyum, 2013). Mexico argued that Chapter 11 did not contain any transparency obligations. It claimed instead that such provisions were only contained in Chapter 18, which applies to disputes between national governments and not disputes between national governments and investors. Therefore, when the Tribunal claimed that Mexico had failed to ensure a transparent and predictable framework for Metalclad's investment, it went beyond the provisions of Chapter 11. Given that Chapter 11 is an instrument that does not significantly rely on other parts of the Agreement for its interpretation, application or administration, and the Free Trade Commission is the only regional body able to revise and

modify the provisions of the Agreement, the Tribunal was seen to have exceeded its powers. The partial success of Mexico in this appeal thus led to the Final Award being marginally reduced. On June 2001, Mexico paid to Metalclad USD \$15.6 million as granted in the revised final award (Iritani, 2001).

In the light of these outcomes, it cannot be said that the provisions of Chapter 11 significantly altered the actions of the municipal, state or federal governments of Mexico. Throughout and after the arbitration, the municipal and state governments successfully challenged the inquiries and demands of the federal government, and the federal government opposed and challenged the findings of NAFTA Tribunal. Even if Metalclad was indeed compensated for the loss of its investment in Mexico, the award was far less than what the company had originally requested.<sup>156</sup>

Further, it can be affirmed that despite the unfavourable ruling of NAFTA Tribunal, the Government of Mexico gained the clarification of various provisions of the Agreement, which decreased rather than expanded its commitments under Chapter 11 –e.g. the aforementioned transparency provisions. The Mexican government was successful in challenging the claims of the investor and significantly reducing the amount and value of the damages for which Metalclad was seeking compensation. Rather than a remedy, Chapter 11 thus worked as an “end-game alternative, to which an investor turns when it has given up on the investment and simply wants to recoup as much of its losses as it can” (Dodge, 2013, p. 5). On this basis, it can be said that in the Metalclad case, governmental actors –at all levels– prevailed over transnational ones and largely succeeded in challenging the actions and decisions of regional bodies. Ultimately, the arbitration did not significantly affect the actions or decisions of the municipal, state or federal governments of Mexico.

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<sup>156</sup> In light of the declarations of Metalclad administrators, it can be safely affirmed that the company was dissatisfied with the resolution of the arbitration and ensuing appeal. For instance, Metalclad's chief financial officer, Anthony Dabbene, commented that Mexico actually won the arbitration “in that Chapter 11 can't hurt them as much anymore... Our case has shown it is almost frivolous to pursue your rights” (Abray, 2001).

### 8.5.2. THE 2005 CANADIAN CLAIMANTS VS. THE UNITED STATES CASES

The Canadian Claimants v. the United States cases significantly differ from that of Metalclad, inasmuch as it did not concern a medium-sized corporation, but a number of individuals and small firms who banded together to file multiple, separate and successive claims against a national government.<sup>157</sup> Before examining the case, it is important to understand the context, rather than the chronology of the dispute, which is the integration of the North American markets.

Prior to the entering into force of the CUSFTA and NAFTA, tariffs inhibited trade in cattle and beef among Canada, Mexico and the United States and consequently their industries operated relatively independently. However, the relaxation and integration of trade regulations that these industries underwent as a result of the implementation of these agreements led to a dramatic increase in the integration of beef production and trade among the three countries (Sparling and Caswell, 2006, p. 216). One of the effects of this liberalised trade was reducing oversight over these products and thus increasing concerns among government agencies and the general public about potential risks to animal and human health. In May 2003, these potential risks turned into an actual one, when Canada reported the occurrence of the first case of bovine spongiform encephalopathy (BSE) in its territory since 1993.<sup>158</sup> Following the announcement, the US and Mexico banned imports of Canadian beef and cattle due to the risk of transfer of diseases and contamination of the food chain. Concerns about cross-border trade of beef and cattle heightened when the US announced in December 2003 the occurrence of its first known case of BSE in a cow that had been imported from the Province of Alberta to the State of Washington in 2001. Consequently, various countries including Canada and Mexico banned imports of US cattle and beef products. Although Canada, Mexico and other countries partially lifted bans on

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<sup>157</sup> The 107 claims collectively referred to as Cases Regarding the Border Closure due to BSE Concerns were actually submitted as separate notices of arbitration, effectively making them separate cases (US Department of State, 2013). Yet, all of these were later consolidated by NAFTA Tribunal in a single arbitration known as The Canadian Cattlemen for Fair Trade v. United States of America.

<sup>158</sup> Commonly known as 'mad cow' disease, BSE is a transmissible neurodegenerative disease that affects the central nervous system in cattle. It is thought to be linked to the human disease known as Creutzfeldt-Jacob Disease that results from the consumption of meat products from BSE-infected cattle. The disease emerged in the UK in the 1980s and has been confirmed in over 20 countries, including most of the EU, Japan, Canada, and the US. So far, no cases have been reported in Mexico (Sparling and Caswell, 2006, p. 218).

US imports in 2004, the US maintained the ban on Canadian beef and cattle. As a result, Canadian exports to the US fell and remained at virtual zero for almost two years (Woods and Grierson-Weiler, 2005, pp. 7,10).

Canadian producers and the government continued their efforts to reopen the US border to trade in these products, including consultation to the World Organisation for Animal Health (OIE) on actions to be taken to respond to the case of BSE. The OIE responded that it did not suggest or recommend the complete prohibition of imports when BSE is detected. Similarly, the US Department of Agriculture determined that Canada constituted a minimal-risk region for BSE. Yet, in March 2005, US federal authorities ruled to maintain the ban on Canadian beef and cattle on the basis that BSE posed a “genuine risk of death for US customers”, thus continuing to affect the operation of Canadian producers (Fox, et al., 2005, p. 107).

#### THE USE OF RULES BY TRANSNATIONAL ACTORS

In the light of this decision, between March and June 2005, 107 different Canadian citizens and corporations in the live cattle sector in Canada, filed an equal number of separate claims against the United States. The claimants alleged that the US had caused “great and unnecessary harm to their investment in the [North American] integrated market in beef and cattle” through the closure of the US border to Canadian products (Woods and Grierson-Weiler, 2005, p. 4).<sup>159</sup> The claimants alleged that the closure of the US-Canada border had violated the provisions of Chapter 11’s Article 1102, which warrants National Treatment to North American investors in the territories of other NAFTA Parties. This claim implied that the potential arbitration of the Tribunal would only revolve around the examination and deliberation of one single issue, that is, the lack of “any probative scientific evidence upon which the United States could base its decision to close the border to beef products” from Canada (Woods and Grierson-Weiler, 2005, p. 25). Therefore, the claimants were not necessarily complaining about the decision to close the

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<sup>159</sup> The 107 claims were all mirror images of each other. They made their case based on the same arguments and were represented by the same co-Counsels. The co-Counsels and claimants acknowledged that Chapter 11 had not been adopted with small investors like them in mind. Instead, the dispute mechanism was envisaged for large corporations to gain access to markets. In their own words, the claimants regarded themselves as “a bunch of little guys who are banding together to use the mechanism to fight a big government”) –i.e. that of the United States– and seek compensation for what they considered undue governmental action (Weiler, 2004, cited in Friesen, 2004).

US border to Canadian products as a measure to prevent the spread of BSE, but the failure to apply any measures to live cattle in the United States. This lack of action suggested that the underlying intention of the US was not preventing and containing BSE, but establishing a dominant position for US investors in the North American market. In the view of claimants, because there was no scientific, evidence-based reason to prohibit the entry of livestock from Canada, the US had acted in an arbitrary and protectionist manner for political reasons, in favour of US investors. In the view of the claimants, this was a violation “in spirit, and in fact, of NAFTA” (Friesen, 2004). As provided by Chapter 11, the complainants requested the arbitration to be undertaken under the provisions of UNCITRAL.<sup>160</sup>

#### THE RESPONSE OF REGIONAL INSTITUTIONS AND THE EFFECT ON GOVERNMENTAL ACTORS<sup>161</sup>

In August 2006, having negotiated with the claimants, the US National Section accepted the claims and announced that they would be consolidated into one single case to be arbitrated by a NAFTA tribunal.

From the beginning, the US alleged that the provisions of Chapter 11 did not apply to this consolidated case. In its view, the claimants had not made, were not making and did not seek to make investments in the territory of the United States (as defined by Article 1139). Given that the US had no obligation under NAFTA with respect to investments in Canada, the tribunal had no jurisdiction to arbitrate this dispute and, therefore, the US deemed that the claims should be dismissed in their entirety. The United States also requested that, should the tribunal dismiss the claims, the claimants were to pay all the costs and expenses of the arbitration. The respondent and claimants discussed and agreed that the tribunal should first resolve the preliminary issue of whether the dispute could be arbitrated under the rules of Chapter 11 and the tribunal had jurisdiction over the case. As such the preliminary issue took the form of the following question:

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<sup>160</sup> Each individual investor sought compensation from the US government in amounts that ranged from the equivalent of USD \$1.04 million to \$10.3 million at 2012 prices (own calculations based on Woods and Weiler, 2005, p. 42). The claimants also requested the payment of various costs related to the arbitration and eventual award of the Tribunal, taking the total cost of the damages requested to up to USD \$587 million at 2012 prices (own calculations based on Friesen, 2004 ; CCPA, 2007, p. 8; Böckstiegel, Bacchus, and Low, 2008, p. 20).

<sup>161</sup> In exchange with other cases discussed in this chapter, the response of the regional bodies and their effect on the national governments cannot be separately analysed due to the constant exchanges between these two actors as well as transnational ones, i.e. the claimants.

Does this Tribunal have jurisdiction to consider claims [for an alleged breach of NAFTA] where all of the Claimants' investments at issue are located in the Canadian portion of the North America Free Trade Area and the Claimants do not seek to make, are not making and have not made investments in the territory of the United States of America? (Böckstiegel, 2006, p. 4).

The parties agreed that Tribunal should first determine whether it had jurisdiction over the consolidated case. If it had jurisdiction, the Tribunal would proceed to hearing the merits of the consolidated claims and arbitrate the case. If not, it would dispose of all of the claims in their entirety. Both parties agreed to this condition. The issue at the core of the dispute was thus the definition of 'investor' in Chapter 11's Article 1139, and based on the answer to this question, whether its provisions were applicable to protect the investments of such 'investors'. This is an important question whose answer defines who is and who is not an actor in the arena. The question was: can an actor that produces and distributes products for the 'free trade area' be also appropriately considered a foreign investor?

The position of the claimants was that they were indeed investors in the 'North American Free Trade Area' in terms of the object and purpose of Chapter 11. Although the investments had been made in Canada, the claimants argued that the purpose of NAFTA is fostering investment opportunities through the creation of a continental market protected against discrimination and unfair measures "regardless of where the investment is located" (Woods and Grierson-Weiler, 2007, p. 13). Therefore, the claim was that when the US imposed a ban on the importation of Canadian beef and cattle but did not take action aimed at controlling BSE in its own territory, it intervened in an unfair, unjustified and discriminatory manner for the benefit of US investors. By doing so, the US had failed to uphold the principle of national treatment that should have been afforded to investors from both countries.

In the view of the US, the claimants had misinterpreted and/or distorted the provisions and objectives of Chapter 11 by overlooking its nature as a legal instrument that sets down rules governing investments by North American nationals *in the territories of other NAFTA*

*countries*. Therefore, the interpretation that the claimants made of Chapter 11's scope constituted a 'radical departure' from what the national governments had negotiated, agreed and committed to through the entering into force of NAFTA (Clodfelter, et al., 2006, p. 3). In sum, the claimants were not investors in the context of the agreement's object and purpose. The US government further demonstrated its discontent with the claim, stating that any other reading of Chapter 11, different to those that the national governments had intended would lead to 'absurd' results.<sup>162</sup> The government backed this interpretation by claiming that in previous arbitrations of Chapter 11 cases, Canada and Mexico had concurred that its provisions only applied to investors that made or are seeking to make, investments in the territory of the disputing Party. Therefore, Chapter 11 was not intended to protect the property of one state's national in their same state.

#### THE AWARD AND THE TRANSGRESSION OF CROSS-BORDER RULES

On October 2007, the NAFTA Tribunal held hearings on the preliminary issue. The appointed arbitrators and representatives from the claimants, respondent as well as the national governments of Mexico and Canada were present at the hearing. This action of the national governments and the Tribunal was contrary to the provisions of NAFTA, which establishes that only the Free Trade Commission (FTC) shall resolve disputes arising from the interpretation or application of the agreement, and that all decisions of the Commission shall be taken by consensus. This violation of the cross-border rules did not go unnoticed. The claimants declared that they were 'well-aware' that NAFTA established that the Free Trade Commission had to deliberate and agree upon the interpretation of the Agreement (Woods and Grierson-Weiler, 2007, p. 45). Yet, the FTC had not provided such an interpretation.

The United States acknowledged that no such interpretation had been made by the FTC. Yet, they argued that it was wrong to suggest that the FTC is the only means by which the national governments may interpret their agreement. In their view, the national governments can, and

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<sup>162</sup> For instance, allowing "every national of a NAFTA Party that believes its business has been adversely affected by a border measure of another [Party to be considered as] an 'investor' entitled to invoke Chapter 11's dispute resolution procedures" (Clodfelter, et al., 2006, p. 3).



routinely, interpret the treaty in many ways. Therefore “the suggestion that a particular formality is required for there to be an agreement among NAFTA Parties is incorrect” (Menaker, Benes, Sharpe et al., 2013, pp. 13-14). The US further argued that because the national governments of the US and Mexico had submitted their interpretations to the Tribunal (on their own behalf, not as part of the FTC), even if Canada did not pronounce on the issue, there seemed to be a ‘practice’ in the application of the agreement. This argument seems to be at odds with those that the United States put forward in its legal defence of the case. On one hand, the US had called for a literal reading of the provisions of the agreement’s Article 1139 and rejected any interpretation that departed from the consensus that the three governments had reached through formal negotiations. On the other hand, it called for a departure from the formal rules established in Article’s 1131 (and 1132). The US here claimed that the Parties to NAFTA could interpret the text of the Agreement in various different ways without any formal procedure or consensus between them. The claimants responded and rightly noted that Canada had not pronounced on the issue, neither in the Tribunal, nor as a part of the Free Trade Commission. Therefore, the US interpretation of the agreement was a unilateral reading of the agreement.

In January 2008, the Tribunal issued its final award on the case. Contrary to the provisions of NAFTA, the Tribunal took upon itself the task of interpreting Chapter 11. Based on such interpretation, it determined, first, that although there was *insufficient* evidence to demonstrate an agreement between the Parties regarding the interpretation of NAFTA or the application of its provisions, i.e. a formal interpretation by the Free Trade Commission, the evidence cited by the US government demonstrated that there is a ‘practice’ in its application. Such practice thus establishes how NAFTA should be applied (Böckstiegel, et al., 2008, p. 110).

Second, the Tribunal determined that it did not have jurisdiction to consider the claims for an alleged breach of Chapter 11. Given that all the claimants’ investments were located in Canada and the claimants do not seek to make, are not making and have not made any investments in the territory of the United States, the dispute cannot be arbitrated under Chapter 11 provisions.

The Tribunal reached this conclusion based on a review of the relevant decisions in other cases. As a result of this review, it concluded “that some of these decisions provide support to the interpretation the present Tribunal has chosen” (Böckstiegel, et al., 2008, p. 120). Having determined that it had no jurisdiction over the matter, the Tribunal dismissed the claims and any breach to the agreement on the part of the United States.

I argue that it is important to understand the final award of the case in order to understand the way in which the regional bodies transgressed the cross-border rules of Chapter 11. In brief, the Tribunal concluded that the provisions of NAFTA could be breached by the national governments and that such transgressions would be upheld by the regional bodies. Contrary to the provisions of Chapter 11, the US and Mexican national governments took upon themselves the task of interpreting the agreement, instead of deliberating, along with Canada, in the formal context of the Free Trade Commission. The ruling also implied that the practices of the national governments prevailed over the cross-border rules and that partial action by the national governments (i.e. the submission of interpretations of Chapter 11 by the US and Mexico, without further comment from Canada) could take over the duties of the regional institutions. In taking this decision, the Tribunal also breached the provisions of NAFTA on the exclusive prerogative of the Free Trade Commission to interpret the Agreement. In short, I argue that the Canadian Claimants vs. the United States cases demonstrate that the national governments can and have overridden the provisions of NAFTA’s Chapter 11, without significant opposition from the regional institutions.

#### 8.5.3. THE 2007 V.G. GALLO V. CANADA CASE

The Gallo v. Canada case is the last that will be analysed in this chapter. It differs from the other two cases in that it only concerned a single individual against a national government. It also resembles the Metalclad v. United Mexican States case, inasmuch as what gave rise to the dispute were not the actions of the Canadian federal government, but those of the Province of Ontario. To understand the case I summarise the actions that preceded the filing of the correspondent claim.

At the end of the 1980s, the city of Toronto determined that its main municipal waste management facility was nearing the end of its operating lifespan. In 1986, Notre Development, a Canadian corporation, identified Adams Mine in Kirkland Lake, Ontario, as a potential landfill site for waste disposal for the city, and three years later, it purchased it.<sup>163</sup> In 1996, the firm submitted the initial application to the Province of Ontario to operate the mine as a landfill. By 2001, the firm had allegedly secured to obtain all other required approvals from the Provincial government to operate the site.<sup>164</sup> In 2002, Vito G. Gallo, a US citizen, purchased the mine from Notre. Gallo was the owner, controller and sole shareholder of Ontario Inc., an enterprise established with the sole purpose of owning and controlling Adams Mine.<sup>165</sup> In July 2003, Ontario Inc. informed the Ministry of Environment (MoE) of the Province of Ontario that it intended to prepare Adams Mine for land filling.

In 2003, the Ministry of Environment released information on the project and solicited public comments on it. Non-governmental organisations and the public found the plans very controversial, and claimed that the potential for contamination resulting from the operation of the plant was too high. Therefore, the Minister of Natural Resources of the Province of Ontario put pressure on the provincial government to “shut the project down” (Fernández Armesto, et al., 2011, p. 50).<sup>166</sup> Yet, Ontario Inc. purportedly required only one more permit to commence the works on Adams Mine, which was expected to be issued in April 2004. Therefore, unless legislative action was taken, Ontario Inc. would be able to start construction works on the site.

On April 2004, the Legislative Assembly of Ontario, under pressure from the provincial Minister of Natural Resources, introduced the Adams Mine Lake Act, to revoke all permits

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<sup>163</sup> From this point onwards, I refer to Notre Development simply as Notre.

<sup>164</sup> Canada claims that the operation of Adams Mine as a landfill required at least seven permits. Ontario Inc. allegedly “never held more than three of these permits. Moreover, these permits were contingent on numerous conditions, many of which were never fulfilled” (Kinnear, et al., 2008, p. 2).

<sup>165</sup> The actual name of the company was 1532392 Ontario Inc. However, I will refer to it only as Ontario Inc.

<sup>166</sup> As in previous chapters, whenever possible, the discussion of this case is based on the public documents made available by the National Sections and the NAFTA Secretariat rather than scholarly commentaries about them. For instance, the document I consistently refer to (i.e. Fernández Armesto, Castel and Lévy, 2011) is the final Award of the Tribunal which adjudicated the case. Rather than authors of a scholarly analysis of the case, Professor Juan Fernández Armesto, Professor Jean-Gabriel Castel and Dr. Laurent Lévy were the members of the Arbitral Tribunal that ruled on the Vito G. Gallo vs. The Government of Canada case. The source is referenced as such after the names of the members of the arbitral panel and does not express or reflect their individual views as scholars.

related to the mine and to prohibit any person from disposing of waste at the site. Furthermore, the Act declared that nothing in it constituted an expropriation or detrimental action, and that in accordance with its provisions, any cause of legal action against the Province of Ontario was declared as inadmissible. Notwithstanding these provisions, the Act granted Notre and Ontario Inc. compensation for an undisclosed amount, but specified that no compensation would be paid for loss of possible profit (Fernández Armesto, et al., 2011, p. 51). After the Act was enacted on June 2004, Ontario Inc. negotiated with the Province to raise the amount of the compensation, but no agreement was reached. In the view of the company, the sum did not cover the loss of the investment and value caused by the enactment of the Adams Mine Lake Act. Further, given that the Act had effectively banned the use of the mine, the firm claimed it had been put out of business and seen its value and that of the site reduced to nil or even negative (Gallo and Swanick, 2007, p. 18).

#### THE USE OF RULES BY TRANSNATIONAL ACTORS AND THE RESPONSE OF REGIONAL INSTITUTIONS

According to Vito G. Gallo, the passing of the Adams Mine Lake Act constituted an expropriation or a measure tantamount to expropriation of his investment in Ontario. In his view, the Act had denied him and his company access to courts and prevented him from taking legal action to ensure the payment of adequate compensation for such expropriation. Consequently, on October 2006, Gallo filed a notice of intent to submit a claim to arbitration against Canada for breaching its obligations under Chapter 11's Articles 1105 and 1110.<sup>167</sup> Gallo filed the Notice of Arbitration for the case requesting the establishment of a Tribunal to arbitrate the dispute under UNCITRAL rules. Finally, Gallo claimed that a NAFTA Tribunal had jurisdiction to hear the claim inasmuch as he and his company fulfilled the requirements to

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<sup>167</sup> Specifically, Gallo claimed that through the enactment of the Act, Canada had failed to afford him fair and equitable treatment as foreign investor and full protection and security for his investment as provided by NAFTA and international law, thus breaching Chapter 11's provisions on Minimum Standard of Treatment and Expropriation and Compensation. To compensate this, he claimed USD \$355 million in damages from the Canadian government.

be considered a foreign investor and foreign investment, correspondingly. In principle, these circumstances made the case admissible for arbitration.<sup>168</sup>

Nonetheless, the Tribunal determined that demonstrating that the dispute involved parties located in two different national jurisdictions was not sufficient to accept a claim for arbitration. It also determined that the acceptance of a claim for arbitration required that the claimant and respondent provided *convincing* evidence to prove its case and defence, correspondingly. The Tribunal thus considered that its first task was “weighing the evidence regarding the factual record [in order] to establish to what extent the facts actually happened as [Gallo] is now averring they did” (Fernández Armesto, et al., 2011, p. 53). This decision by the Tribunal was innovative in terms of institutional action. For the first time since the entering into force of NAFTA, a Tribunal determined that it would examine the “plausibility” of the facts alleged by the parties to the dispute, rather than simply assuming their veracity (Fernández Armesto, et al., 2011, p. 53). In other words, the Tribunal decided to investigate and determine whether the events could have taken place in the way the claimant (and to some extent, the respondent) claimed they did. This does not mean that the Tribunal granted itself fact-finding competences, as this would have gone far beyond its faculties as an arbitrator, but it does entail that it expanded its responsibilities from arbitrator to inquirer –thus suggesting that the Tribunal adopted a quasi-judicial function that NAFTA had not provided for.

The Tribunal issued multiple procedural orders, amendments and guidelines aimed at clarifying and organising the evidence presented by Gallo. Yet, it eventually determined that Gallo’s factual record “was full of unusual circumstances and outright mistakes” which obscured rather than clarified the way and means in which he had acquired, financed and managed the Adams

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<sup>168</sup> Confirming the possible jurisdiction of a NAFTA Tribunal has become a regular practice for claimants and counsellors, in order to prevent occurrences such as that of Canadian cattlemen v. United States of America. Here, it is important to highlight the role of the legal counsellors. After a few times of using, applying and interpreting the provisions of Chapter 11, counsellors have gained experience and knowledge about the rules and have carried on this accumulated understanding to their following cases. In Gallo vs. Canada, one of the counsellors to the claimant was Todd J. Grierson Weiler who had also acted as counsellor for the claimants in Canadian Cattlemen vs. United States of America. It is thus very likely that one of the most important aspects in structuring the case for the claimant was ensuring that a NAFTA Tribunal had jurisdiction over the case.

Mine site (Fernández Armesto, et al., 2011, p. 54).<sup>169</sup> It also found that Gallo had actually entrusted the management of the mine to a third party, a Canadian real estate developer named Mario Cortellucci, who at all times acted as the owner of the mine with respect to third parties, even the Government of Ontario, until the enactment of the Adams Mine Lake Act. Cortellucci seems to have been at all times the owner of Ontario Inc. However, because the project faced widespread opposition among the local population and provincial government and eventually Toronto expressed no interest in using the Adams Mine as a landfill for its waste, Cortellucci was left with no potential use for the mine. This situation was further aggravated when the provincial legislature enacted the Adams Mine Act.

Based on its inquest into the evidence provided by Gallo, the Tribunal determined that Cortellucci and Gallo had eventually met and entered an oral agreement. What follows is either undetermined or undisclosed in the public report of the final award of the Tribunal.<sup>170</sup> It is likely that the Tribunal found out that Gallo had acted as the owner of the Adams Mine. Cortellucci probably attempted to resell the mine to an undisclosed buyer at a substantial profit. When the sale did not take place, Gallo in agreement with Cortellucci, acted as owner of Ontario Inc. in order to file a claim for arbitration against the government of Canada under the provisions of Chapter 11 for a share of the compensation sought. The events thus suggest that Cortellucci and Gallo attempted to commit a fraud against the Province of Ontario and Canada.

However, neither the Tribunal nor the government of Ontario ever claimed that the claimant had acted fraudulently. The Tribunal did not attempt to pursue a criminal case against the claimant. It only aimed at determining whether it had jurisdiction to arbitrate the dispute. Therefore, based on the errors, inaccuracies and omissions in the record, the Tribunal declared itself unable to ascertain when, and under what conditions, or whether at all, had Gallo acquired ownership and

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<sup>169</sup> For instance, the Tribunal found out that although Gallo had “incorporated a corporation and allegedly purchased Adams Mine, he [had] never signed any document whatsoever” and was unknown to the municipal and provincial authorities before the enactment of the Adams Mine Lake Act (Fernández Armesto, et al., 2011, p. 54).

<sup>170</sup> Substantial parts of the public version of the final award were redacted (i.e. removed) as a result of the confidentiality order issued by the Tribunal on June 2008 at the request of the claimant. Therefore, one can only infer what the findings of the Tribunal were. However, the conjecture that Gallo and Cortellucci entered an agreement to attempt “to defraud the Government of Canada” was indeed suggested in Canada’s Submission on Jurisdiction and addressed in the claimant’s Post-Hearing Submission on Jurisdiction (Gastle, et al., 2011, p. 2).

control of the mine. It also concluded that that the claimant had not been able to prove the date when he acquired Adams Mine and that the date of the acquisition predated the enactment of the Adams Mine Lake Act. In light of these findings, the Tribunal determined that it had no jurisdiction to consider the claims made by Vito G. Gallo. In September 2011, the Tribunal dismissed the case.

#### THE EFFECT ON GOVERNMENTAL ACTORS

From the beginning of the dispute, the Canadian government maintained the same position. It argued that the claimant had no standing before a NAFTA Tribunal as he had not made an investment in the Province of Ontario prior to the enactment of the Adams Mine Lake Act. Because he was never a foreign investor in Canada, the national government requested the Tribunal to dismiss the claims in their entirety and order the Claimant to bear the cost of the arbitration (Fernández Armesto, et al., 2011, p. 68). In doing this, the government of Canada had two objectives:

Firstly, to reaffirm the right of domestic governments to bring forward legislation that protects the public interest. In its statement of defence, as well as parliamentary debates and public information sessions discussing the case, Canada emphasised that Chapter 11 did not restrict the normal activities of its national, provincial, territorial or municipal governments, neither did it prevent any of them from legislating and regulating in the public interest (DFATD, 2013). In doing this, Canada aimed to tackle concerns still prevalent among provincial and local governments about the use of Chapter 11 by prospective investors against local legislation protecting the public interest.

Secondly, to signal to potential claimants that Canada would not cede to pressures from foreign investors to weaken domestic legislation as a result of Chapter 11 challenges. In doing this, Canada expected that its response, along with the decision of the Tribunal, would make “US or Mexican investors who decide to take Canada to court under NAFTA [to] think twice” about the legal and financial consequences of their challenges under Chapter 11 (Gray, 2011). In brief, the

Canadian federal government aimed to send the message that potential claimants would “face an uphill battle” (Farber and Martin, 2012, p. 2). The NAFTA Tribunal contributed to the accomplishment of this objective when, as part of its final award, it ordered Gallo to pay USD \$450,000 to cover the costs of the arbitration.

Based on the outcome of the case, I argue that:

- The Tribunal acted in the interests of the national government of Canada and declined to further the (detrimental) interests of the transnational actor –in this case, the claimant; and,
- The Tribunal furthered its powers but did not advance the cross-border rules.<sup>171</sup>

First, the Tribunal exerted a quasi-judicial function that NAFTA did not provide for. Rather than solely arbitrating the dispute, the Tribunal took upon itself an investigative function, in a manner that is closer to the responsibilities of domestic courts. For instance, the Tribunal determined that to accept the request for arbitration, it was not only necessary to fulfil the requirement that the investment and the investor were located in two different national jurisdictions, but also to establish that the events alleged by the claimant (and to a lesser extent, the respondent) were plausible. In this sense, the Tribunal overstepped its responsibilities as an arbitrator and turned into an inquirer, much in favour of the respondent. The Tribunal concluded that NAFTA set a clear “line between foreign and domestic investors [that] needs to be respected and [that] privileges conferred to the former are not to be abused by the latter” (Farber and Martin, 2012, p. 3). In its view, the claimant had attempted to use the provisions of Chapter 11 as a means to sidestep domestic legislation by portraying himself as a foreign investor whose investment had been damaged. The decision thus showed that NAFTA Tribunals “will not put up with attempts by domestic investors to manufacture a NAFTA challenge” (Gray, 2011).

Second, the Tribunal furthered its own powers (and incidentally protected the interests of the Canadian national government) yet it did not advance the cross-border rules. In none of the

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<sup>171</sup> In the *Vito G. Gallo v. Canada* case, the position of the Tribunal had a positive outcome: impeding the committing of a fraud against Canada and Ontario. Yet, in this specific case, I am not necessarily interested in the decision of the Tribunal. Instead, I am interested in determining whether its actions contributed to expand the cross-border rules.



previous cases had the Tribunal overstepped its arbitration functions to become an inquirer. This was an innovation in terms of institutional action and the Tribunal itself acknowledged this occurrence in its final award. It claimed that “the case at hand is an excellent example of the tension between claimant’s requests to expand treaty protection [...] and the Tribunal’s obligation to apply the treaty on the terms and with the subjective scope agreed between NAFTA contracting parties” (Fernández Armesto, et al., 2011, p. 66). In other words, the Tribunal furthered its powers to uphold the rules of the Agreement, but it did not advance such rules.

Given that arbitration of Chapter 11 cases relies on an ad hoc ruling, this determination and actions by the Tribunal are not binding for future cases. In other words, the Tribunal only temporarily expanded its functions in order to reach a decision on its jurisdiction (or lack thereof) over the case. Once the arbitration concluded, such expanded functions ended while the cross-border rules remain unimproved. This outcome has important theoretical implications, indicating that although common policy arenas “rarely [...] institutionalise without a concomitant development of [regional] organisations” (Stone Sweet, et al., 2001, p. 19), the reverse is not necessarily accurate: regional bodies might develop without a concomitant development of the cross-border rules, and thus, the arena. What is more, it also indicates that the development of regional bodies does not necessarily go against the interest of the nation-state and, on the contrary, it might further them.

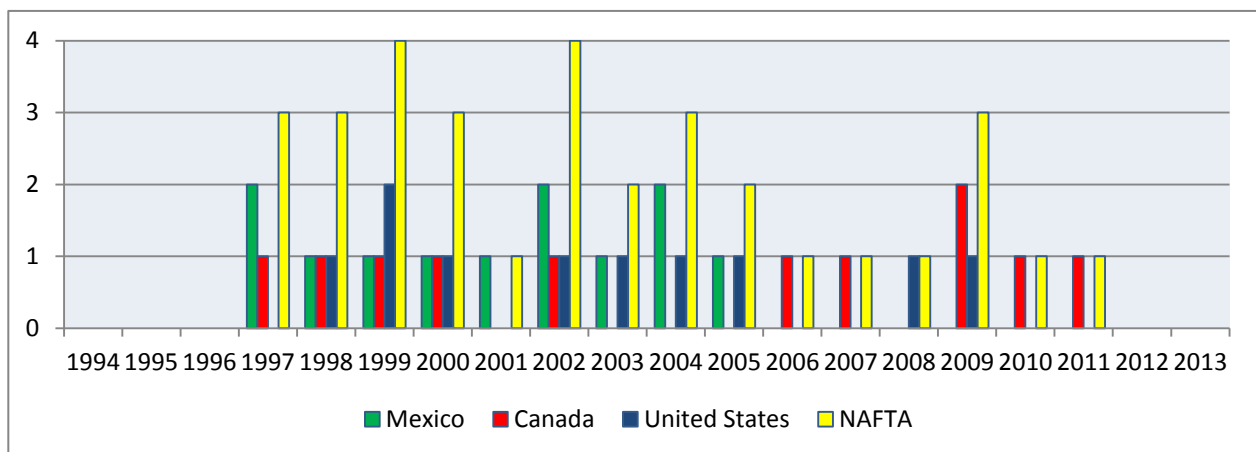
#### 8.6. THE LACK OF INSTITUTIONALISATION OF THE COMMON POLICY ARENA

As I indicated by the three cases above, the rules of Chapter 11 and the regional institutions and bodies that it created have done relatively little to advance the rights and protection that North American investors are afforded with respect to their investments in other North American countries. More importantly, these rules and institutions have not contributed significantly to the expansion or (consequently) the consolidation of the common policy arena on protection of foreign direct investment in the region. In this chapter, I have argued that the weak permanent institutions of Chapter 11 (the Free Trade Commission and NAFTA

Secretariat) and its ad hoc and temporary bodies (NAFTA Tribunals) largely represent or incorporate the interests of the national governments. Paradoxically, as I have discussed, on a number of occasions, the national governments have side-lined or ignored rules set in Chapter 11 at the expense of the cross-border rules and consequently, the regional institutions and bodies.

Transnational actors (i.e. foreign investors) have progressively acknowledged these deficiencies and decreased their engagement with the provisions and institutions of Chapter 11 to file claims against the North American governments for failures to ensure fair and equal treatment to them or their investments in their territories. Since its entering into force, 43 claims have been filed and accepted for arbitration against the three NAFTA countries –most of them against Canada, followed by the US and Mexico, in that order.<sup>172</sup> Yet, as the graph below shows, the aggregated number of claims against NAFTA countries peaked in 2002 and has declined ever since.

GRAPH 1. NUMBER OF CHAPTER 11 CASES FILED AND ACCEPTED AGAINST THE PARTIES  
(1994-2013)



Sources: Foreign Affairs, Trade and Development Canada (2013), Secretaría de Economía (2013) and US Department of State (2013). Correct as of July 2013

<sup>172</sup> Although data from Canada and Mexico indicates that there have been other attempts from foreign investors at filing claims against either of these governments, the figures are not significantly higher. To this date, fifteen letters indicating intention to file a claim have been addressed to Canada. Six of those have already been withdrawn and the other nine remain inactive. Yet, because none of this resulted in a formal notice of arbitration, they do not constitute claims and therefore are not included in the figures for Canada (DFATD, 2013). Similarly, to this date, four notices of intent have been served to Mexico. However, none of them has resulted in a formal notice of arbitration. One notice of arbitration against Mexico remains inactive and unlikely to be accepted for arbitration (Secretaría de Economía, 2013). I have been unable to find information on notices of arbitration withdrawn or inactive against the United States.

For instance, although Mexico was the first country to be targeted under Chapter 11, since 2005 no more claims have been filed (and accepted) against it. Also, since 2009, no further claims have been filed and accepted against the United States. However, Canada has been continuously targeted under Chapter 11 (although it was only in 2009 that it received more than one claim on the same year). This is an outcome with important implications for regional integration theories. The US and Canadian national governments and foreign investors had Mexico in mind when they sought Chapter 11. However, the fact is that the Chapter has been used more times against the US and Canada than Mexico. Appleton (cited in DePalma, 2001), Cavazos Villanueva and Martínez Serna (2002) argue that the US and Canadian governments did not expect this outcome. Instead, they expected that Chapter 11 claims would be almost entirely directed at Mexico. This outcome thus provides further support for the argument of Supranational Governance on the impossibility of national governments to calculate all possible outcomes of the intergovernmental bargains and agreements. I argue that transnational actors in the arena on protection of foreign direct investment have thus used the cross-border rules in ways that the national governments did not anticipate and could not possibly foresee.

These outcomes could suggest the expansion of the arena. However, their number is not significant enough to expand the arena. Despite the continuous rise in cross-border exchanges, transnational actors have not correspondingly used the cross-border rules. This is reflected in the low engagement with the provisions and institutions of Chapter 11, and specifically its dispute settlement procedure. To this day, only a limited number of claims have been filed and accepted for arbitration under the provisions of Chapter 11. Since its entering in 1994, only 43 claims have been successfully filed against the North American governments –17 against Canada, 14 against the United States and 12 against Mexico. Therefore, to this date, less than two claims have been filed per year against any of the North American governments. What is more, while from 1990 to 2011, FDI flows multiplied ten-fold, in the same period the number of Chapter 11

claims fell to zero.<sup>173</sup> Furthermore, the fact that an investor succeeded in filing a claim for arbitration does not entail that their case succeeded in the ensuing arbitration. For instance, as the table below shows, foreign investors have been very unsuccessful in arbitrations made under the provisions of Chapter 11.

TABLE 4.							
OUTCOME FOR CLAIMS FILED UNDER NAFTA'S CHAPTER 11 (1994-2013)							
	Claim filed and accepted	Case arbitrated and closed	Successful for the claimants	Rate of success for claimants	Dismissed or tribunal had no jurisdiction	Rate of success for respondents	Payment from claimants to respondent <sup>174</sup>
<b>Canada</b>	17	11	3	27%	5	45%	2
<b>Mexico</b>	12	12	5	42%	7	58%	1
<b>United States</b>	14	10	0	0%	10	100%	5
<b>Total</b>	43	33	8	24%	22	67% <sup>175</sup>	6
All figures rounded to the nearest decimal. Calculated with information from DFATD (2013), Secretaría de Economía (2013) and Department of State (2013).							

Considering only those cases that have been already arbitrated and closed:

- Out of 11 claims filed against Canada, only three have been successful for the claimants and resulted in total or partial payment of damages from Canada. In five cases, the Tribunal dismissed the claims or it determined that it had no jurisdiction over them. In two of those five cases, the Tribunal, apart from dismissing the claims, ordered the claimants to pay Canada legal fees and arbitral expenses in compensation for the costs

<sup>173</sup> This trend in North America seems to be consistent with that at the global level where increasing investment flows “do not appear to correlate to the absence of multilateral rules on investment” (Kurtz, 2002). In other words, increased flows of foreign investment do not necessarily results in increased claims for arbitration.

<sup>174</sup> The Tribunal dismissed the claims and ordered payment to the respondent.

<sup>175</sup> The missing 9% (24 + 67 = 91%) corresponds to three cases settled by Canada. This rate of success rises to 76% if one considers Canada's settlements as wins for the national government. Canada's settlements are not included in the corresponding figures.

incurred in the arbitration. Finally, in three cases, Canada has settled the dispute with the claimant.<sup>176</sup>

- Out of the 12 claims filed against Mexico, only five have been successful for the claimants and resulted in payment of damages. In seven cases, the Tribunal dismissed the claims or it determined that it had no jurisdiction over them. In one case, the Tribunal, apart from dismissing the claims, ordered the claimants to pay Mexico legal fees and arbitral expenses in compensation for the costs incurred in the arbitration.
- Out of 10 claims filed against the US, none has been successful for the claimants. In all cases, the Tribunal dismissed the claims or it determined that it had no jurisdiction over them. What is more in five out of those ten cases, the Tribunal ordered the claimants to pay the US legal fees and arbitral expenses in compensation for the costs incurred in the arbitration.

These findings go against a number of arguments in the wider literature that the entering of Chapter 11 would open the door to multiple claims from foreign investors with the objective of changing or undermining domestic social- and environmental-oriented laws and regulations unfavourable to their businesses. During the negotiation and after the entering of NAFTA, non-governmental organisations and civil society groups in the three North American countries raised concerns about the regional and international arbitration mechanism established in Chapter 11. Most of these organisations and groups claimed that this mechanism would result in key economic and political matters being decided “in confidential proceedings by [tribunals] consisting in large part of foreigners” unaccountable to their correspondent domestic institutions and the public (Aguilar Álvarez and Park, 2003, p. 366). In fact, foreign investors have acknowledged the impediments and challenges associated with filing claims under Chapter 11. In their declarations and statements on their corresponding cases, almost no investor has

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<sup>176</sup> Settlement of disputes is not provided under Chapter 11 and in general, the national governments do not settle Chapter 11 claims (Dodge, 2013, p. 14). Given that Canada has been the only country to use this alternative, and that it has done so in only three occasions, I have been unable to determine why the government opted to settle in these disputes.

expressed confidence in winning a Chapter 11 arbitration, and even in favourable cases, they have expressed their dissatisfaction with the final awards of the Tribunals.<sup>177</sup>

In sum, the use of the cross-border rules set out in Chapter 11, and especially its dispute settlement mechanism, has been counterproductive for transnational actors. Two out of every three times that a foreign investor has proceeded with arbitration against North American governments, the outcome has been unfavourable to them. In almost one out of every five times, it has resulted in further losses to the individuals or firms involved, due to a decision from the Tribunal to award compensation for arbitration costs to the national governments. In most cases, foreign investors would have incurred in less losses if they had not used the provisions of Chapter 11.

I argue that these circumstances demonstrate the lack of institutionalisation of the common policy arena, which was created through the negotiation and entering of Chapter 11. Although the arena is demarcated by an important number of rules –the chapter contains 38 articles that cover various obligations of national government and rights of foreign investors with respect to investments in other NAFTA countries, the use of these rules has been far from intense. In almost 20 years of existence, transnational actors have not engaged with the cross-border rules of Chapter 11 in any significant way.

In addition, the regional institutions and bodies of NAFTA seem to be so weak that their rules are very limitedly used by transnational actors. In turn, the institutions have done little to nothing to deliver better rules. Quite the opposite, when these institutions or bodies have been venturesome and innovative in the use of their powers and accomplishment of their obligations, their actions have been in favour of national governments. As I described and examined on the *Metalclad v. Mexico*, *Canadian claimants v. United States*, and *V.G. Gallo v. Canada* cases, whenever the National Sections and the Tribunals have innovatively interpreted, overstepped or

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<sup>177</sup> On the contrary, foreign investors have emphasised the remedial nature of Chapter 11 disputes. For instance, Barry Appleton, counsel to Ethyl Corporation in its case against Canada, dismisses concerns about the potential use of the agreement as a mechanism to weaken domestic laws. In his view, such “claims are ludicrous [because] NAFTA doesn't strike down laws; it awards damages” (2000, cited in Valance, 2000). Indeed, the claim that foreign companies flagrantly and frequently abuse Chapter 11 to overturn domestic legislation is exaggerated at best (Hufbauer and Goodrich, 2004, p. 47).

otherwise acted beyond the provisions of Chapter 11, they have done so in favour of the national governments.

One of the reasons for this inclination towards national governments is the composition of the regional institutions and bodies themselves. The permanent regional institutions in charge of administering Chapter 11 –the Free Trade Commission (FTC) and the National Sections– are formed by national governments or their representatives, and therefore, they are not intended to attend, oversee or further the cross-border rules or their own roles as regional actors. Instead, as I emphasised in the three cases, the FTC as such was never requested to interpret Chapter 11. Instead, the respondent and at times other national governments, either presented their own views on the issues at hand through their memorial of the cases or submissions, or did not provide any interpretation at all –even if such interpretations were required to arbitrate the dispute.

Meanwhile, the other regional bodies in charge of arbitrating disputes relating to Chapter 11 – the NAFTA Tribunals– are not intended to further or improve the cross-border rules. Although the rationale behind negotiating and implementing of Chapter 11 is fostering greater flows of FDI in North America, the objective of the NAFTA Tribunals is not to uphold the provisions of Chapter 11, but to arbitrate disputes after national governments have already *breached* their provisions. Therefore, the Tribunals are not able to grant relief or restitution to claimants or to prevent future breaches through the enhancement of current rules, but merely award the payment of damages in the case that a national government fails to fulfil its commitments under Chapter 11. Thus, NAFTA Tribunals can only grant compensation for the action of governments, but not alter their behaviour.

Even in arbitrations, the Tribunals are inherently sided with the national governments. Because the “NAFTA arbitration panels are composed of seasoned experts in international law”, they are not easily convinced that a Party breached its obligations under NAFTA (Herman, 2011). What is more, contrary to the provisions of Chapter 11, the Tribunals have often assumed the responsibility of the FTC in interpreting the Articles of Chapter 11, and most of the times such

interpretation has been more favourable to governmental than to transnational actors. Here, it is important to understand that I am not advocating or calling for tribunals to soften their arbitrations or rulings on Chapter 11 cases. Instead, I highlight the fact that in Chapter 11 there is no permanent or *ad hoc* institution that supports or eases the engagement of transnational actors, while Tribunals do support or ease the engagement of governmental actors with the Agreement.

Finally, it is important to remember that NAFTA Tribunals are not permanent. Their decisions are only binding for the correspondent case, and their actions and decisions are mediated and informed by the use of multilateral rules, such as the ICSID or UNCITRAL rules as well as international conventions and other international agreements. As a result, their actions do not impact or further existing cross-border rules. Instead, Tribunals only deliberate on their relevance, meaning and applicability to the dispute at hand without consolidating those decisions into a coherent legal framework for the protection of foreign direct investment.

Based on these arguments, I conclude that the arena on foreign direct investment, that the national governments created through the negotiation and implementation of Chapter 11, has neither expanded nor consolidated, and is not institutionalised.

## 8.7. CONCLUSIONS

Contrary to commonly held views in the wider literature, the arena on foreign direct investment (one of the most codified in the NAFTA), is the least institutionalised of all the arenas discussed and examined in this thesis. This would seem at first glance to be a paradoxical finding. Chapter 11 was the only one of the three agreements analysed in this thesis that was intended to suit the needs of a specific type of transnational actor –foreign investors. “The right which [Chapter 11 conferred] upon investors to have direct access to international arbitration is a valuable and remarkable remedy in the North American context. NAFTA predecessor agreement in the region, the [CUSFTA], did not have investor-to-state arbitration. Thus, Chapter 11 was an extraordinary” achievement in the development of the regional legal framework for the protection of foreign direct investment (Perezcano Díaz, 1999, p. 95). Its



provisions significantly advanced the rights that foreign investors had been given through bilateral, multilateral and international investment agreements.

Yet, to this date, only a limited number of transnational actors have engaged with, and used, Chapter 11. In comparison with the side agreements on environment and labour, which have fostered cross-border exchanges, created and improved cross-border rules and even expanded and strengthened its corresponding regional institutions, Chapter 11 is structured by a number of insignificant rules that are scarcely used by transnational actors and almost never upheld by the weak regional institutions or bodies that administrate them. Due to these conditions, only a very small number of transnational actors have engaged with Chapter 11, while its rules remain burdensome and unclear for foreign investors –the group who was allegedly more likely to use them and was expected to do so.

In addition, in the few cases that transnational actors have used its provisions, the outcome has mostly been patently adverse. The uncertainty, expenses and extended duration of the arbitrations of NAFTA Tribunals have deterred would-be users of these rules to the point that for the last two years, no claims have been made against any NAFTA country. While this outcome could certainly result from greater understanding and awareness from national governments on the rights of foreign investors, it is very unlikely that in a context marked by a dramatic ten-fold increase in foreign direct investment, no claims have arisen.

Instead, this lack of engagement with Chapter 11 is probably due to the existence of better, clearer and more efficient institutional mechanisms in the international arena, which cover the same aspects on the protection of foreign investors and investments and whose objectives overlap with those of NAFTA, but with better and more effective mechanisms to uphold them. It is possible that the governmental actors who negotiated and entered NAFTA preferred to rely on these multilateral frameworks rather than on Chapter 11. For instance, the Chapter's dispute settlement mechanism still relies on the procedures and facilities of multilateral institutions –i.e. ICSID and UNCITRAL. The supposed logic behind these decisions was the maintenance of a fair, rules-based and predictable environment for investment. I claim that, instead, the operation

of this regional/international mechanism has resulted in a fragmented legal framework for foreign direct investment.

All things considered, Chapter 11 granted a right to transnational actors –individuals and firms alike– to challenge governmental actors before an international tribunal, without the assistance of their home country's government, and receive compensation for the *effects* of inadequate action of NAFTA governments. Yet it did not provide them or the arena with effective regional institutions that can translate those challenges into more effective and better cross-border rules for future use. Thus, unlike in the environmental case, where we saw intense use of rules by transnational actors and a correspondingly intense action of the regional institutions, and unlike the labour case, where we saw fair use of rules by transnational actors and limited action of the regional institutions, here we see very limited use of rules and even more limited action of the regional institutions. Therefore, in the case of the protection of foreign investment, we see the lack of institutionalisation of the common policy arena.

# CHAPTER 9

## CONCLUSIONS

## 9. CONCLUSIONS

In this thesis, I have aimed to reappraise the process of integration between Canada, Mexico and the United States and demonstrate that the process of regional integration in North America is more substantial than previous studies claim.

I have argued that the actions of transnational actors, e.g. civil society groups, labour unions and firms, have increased the policy interdependence between the three countries in the arenas of environmental protection, labour cooperation and protection of foreign direct investment. I further argued that these actors have used, applied and interpreted the rules originally created by the intergovernmental agreements –NAFTA, NAAEC, BECA and NAALC– and have subsequently demanded additional and improved rules, which have modified and expanded the terms of the original bargains achieved by the governments of Canada, Mexico and the United States. I have argued that, in various instances and to different degrees, the regional institutions established by these agreements have responded to these demands by supplying new and improved regional rules. In doing so, transnational actors and regional institutions have furthered the policy interdependence between the three countries. I concluded that this phenomenon, which I referred to as institutionalisation, has not been fully acknowledged in the current literature.

To advance these arguments, I began by showing that most studies of regional integration in North America to date regard the process as limited to the implementation of agreements on trade and foreign direct investment, labour and environment, and the creation of a few regional institutions charged with managing these agreements. These studies claim that the national governments of Canada, Mexico and the United States proposed, negotiated and delivered NAFTA in order to create and expand the market for their products and services and to promote and expand the flows of foreign direct investment between their countries. These studies further claim that NAFTA resulted from a series of bargains between the North American national governments, and more specifically, their heads of state, whose interests shaped the agreement

and the regional integration process that resulted from it. I have also shown that based on this account, most studies argue that the process of regional integration in North America is of an intergovernmental nature. In other words, according to these studies, the regional integration process in North America is under the control of the national governments, who are the most important actors in the process and whose actions and decisions have determined the pace, direction and breadth of integration.

In this thesis, however, I have aimed to demonstrate that the process of regional integration taking place between the three North American countries is more substantial than current studies claim, and more importantly, that the nature of the process has significantly changed since the entering into force of NAFTA and its side agreements in 1994. Although I concur with the abovementioned studies that regional integration in North America *started* as a process of an intergovernmental nature, I have aimed to demonstrate that the nature of the process can no longer be considered purely intergovernmental. I have argued that regional integration in North America has changed as a result of the actions of transnational and regional actors, who in the pursuit of their own interests, have shifted the behaviour of national governments in ways that purely intergovernmentalist accounts cannot explain. This thesis thus departs from the bulk of the scholarship on North American integration by arguing that the process needs to be theorised also in terms of institutionalisation.

To advance this argument, I first conducted a review of the current literature. I showed that most studies understand the origins of regional integration in North America as intergovernmental. However, I argued that this understanding has transformed into the assumption that the nature of the process is still intergovernmental. Based on this assumption, a number of scholars have claimed that the process does not need to be theorised. Further, those authors who have theorised the process have opted to use theories in the fields of International Trade, International Negotiation and International Political Economy, rather than theories of regional integration. These authors claim that the integration process in North America is best explained through the analysis of economic dynamics at the international level, rather than political or policy

developments at the regional level. Other authors still, presume that regional integration in North America can be theorised using approaches based on New Regionalism. These authors use approaches that question the concepts, arguments, variables and frameworks of so-called 'old' theories of regional integration, namely intergovernmentalism and neofunctionalism, and instead emphasise the differences and specificities of different regional arrangements, understood as agreements entered into between nation-states that do not create institutions to manage them. Finally, rather than comprehensively using the intergovernmentalist and neofunctionalist approaches that have been developed to explain other processes of regional integration, namely the European, some authors have reduced the arguments and frameworks of these theories to a few features or 'attributes', in order to evaluate their relevance to the North American context.

I argued that this assumption, along with these uses of various theories, has had negative effects on the scholarship on regional integration process in North America. Firstly, I argued that these studies have discouraged the use of (European) regional integration theories in the analysis of the North American case, inasmuch as they prompted scholars to not provide sufficient attention to, or even dismiss, the relevance of their concepts, arguments and frameworks to the analysis of the process between Canada, Mexico and the United States. Furthermore, I contended that, in the few instances in which scholars used theories of (European) regional integration to analyse the North American case, they did so for normative or critical purposes rather than exploratory or analytical ones. In other words, these scholars used the theories developed in the European context as models or 'guidelines' to be followed in North America, rather than analytical tools. I maintained that these practices in the scholarship on North American integration have prevented a full analysis of the process and its development in the past twenty years. In particular, they have left a gap in our understanding of the ways in which transnational actors and regional institutions are influencing policy-making at the regional level in North America.

I continued this thesis by discussing the works of O'Brien (1995), Sands (2002), Della Sala (2008), Warleigh-Lack (2008) and Aspinwall (2009). I argued that these authors contributed to:

- Shifting the study of North American integration away from the use of International Trade, International Negotiation and International Political Economy theories onto regional integration theories;
- Changing the understanding of regional integration, from a condition to be attained to an ongoing process of economic and political change, and expand the analysis of regional integration in North America beyond trade and investment to other arenas;
- Developing a conceptual and ‘pre-theoretical’ framework that could be applied to the analysis of regional integration in North America.
- Indicating the usefulness of (European) regional integration theories, namely intergovernmentalism and neofunctionalism, to the analysis of the North American process; and,
- Identifying changes in policy-making at the North American regional level.

In part through building on the works of these scholars, I defined the contribution of this thesis, which is examining the integration process occurring between Canada, Mexico and the United States, with the conceptual and theoretical instruments that were specifically developed for analysing, discussing and explaining the occurrence and development of regional integration. I argued that although a significant number of scholars have discussed and analysed the phenomenon of regional integration in North America from various standpoints and from different disciplines, none of them has made full use of theories of (European) regional integration to analyse the North American process.

To do so, I used the theories of Liberal Intergovernmentalism (LI) and Supranational Governance (SG) that were developed to explain the integration process in Europe. These are the most recent and most refined versions of the two main competing theories of regional integration, intergovernmentalism and neofunctionalism, aiming to explain the *occurrence and development* of the European integration process. I argued that these theories provide a solid basis for building my own theoretical framework, inasmuch as both regard integration as a process, and they produce (ostensibly) different accounts of the role of different actors in its

occurrence and development. I argued that these theories were more concerned with the ways and means by which the phenomenon of integration came about than with explaining what kind of polity it is creating or where the process is leading. These theories also have a different focus and put different emphasis on the actions and relevance of national governments, supranational (or regional institutions), and transnational actors in the occurrence and development of the process. I finally discussed how both theories downplay the role of transnational actors and their actions for the development of the process of regional integration. On the one hand, LI dismisses any role for regional institutions, which are seen as ‘passive sets of rules’, as well as for transnational actors, in the advancement of the process. On the other hand, although SG maintains that transnational actors catalyse and sustain the integration process through their demands for the establishment (or expansion) of supranational rules, it emphasises the role and actions of the actors who push forward and deliver coordinative policies (and at times, even devise new ones), who are the supranational institutions.

Therefore, I argued that these theories have not adequately captured the ways in which transnational actors contribute to the expansion and consolidation of common policy arenas, thus influencing the behaviour of national governments and the capacity of supranational/regional institutions. It is in this last respect that my thesis contributed to the further advancement of the subfield of Regional Integration Theory by introducing, clarifying and increasing the coherence of three core concepts present in the theories of Liberal Intergovernmentalism and Supranational Governance. These are common policy arena, transnational activity and institutionalisation. I have argued that the incorporation and operationalisation of these revised concepts in these theories enhances the overall explanation of the phenomenon of regional integration and, therefore, understanding these three concepts is fundamental to understanding regional integration as a process. To advance this thesis’ arguments, I created a theoretical framework that builds up on the theories of Liberal Intergovernmentalism and Supranational Governance, and uses these concepts to analyse the emergence and development of the integration process.



First, I introduced the concept of common policy arena. I understand this as an institutional framework for the discussion, negotiation and implementation of transnational rules relating to a given set of related policy issues. I argued that to date, most scholars of regional integration in North America have tended to analyse one policy field (or ‘policy arena’) and, then, to generalise their findings about one arena, to the process as a whole. I argued that this practice has resulted in the assumption that progression (or weakening) of common rules in one policy arena, automatically results in the advancement (or digression) of the rules and institutional structure of the process as a whole. Instead, I proposed to use this concept to disaggregate the study of the process and better examine institutional developments within the same arena. I further argued that analysing how these arenas were individually created and subsequently developed will contribute to illuminate the role and importance of governmental, transnational and regional actors at different stages of the process.

Second, I proposed to revise and strengthen the concept of ‘transnational activity’ present in Supranational Governance theory. I showed how, despite the importance of the actions of both transnational actors and regional institutions, only the latter were incorporated into SG, while the former received marginal attention. Meanwhile, Liberal Intergovernmentalism dismissed any role for these actors in the whole process. According to intergovernmentalists, only the ‘grand bargains’ propel integration forward, as it is then that national governments pool their sovereignty and capacity to rule on a given set of policy issues and establish institutions to lock-in this commitment. National governments are said to control the integration process because they effectively control the bargaining stage. Yet, in this thesis, I argued that national governments control the bargaining stage of the process of regional integration, and thus the creation of common policy arenas, but not necessarily other stages in the process. I showed that, although national governments might create common policy arenas through bargaining, transnational actors often expand these arenas in ways that the national governments did not anticipate or foresee. Their use, application and interpretation of the cross-border rules often results in a demand to both national governments and regional institutions for more and

improved cross-border rules. However, as I explained, national governments have often been unable or unwilling to respond to such demands. Therefore, regional institutions, acting in a rational manner and intending to further their own powers, have often delivered better and more cross-border rules, even if to different degrees to respond to this demand. I argued then that both Supranational Governance and Liberal Intergovernmentalism have overlooked the deliberate and purposive actions of transnational actors, and thus their role in the development of the process.

To illustrate my arguments, I conducted an analysis of three case studies:

- The common policy arena on environmental cooperation, created by the North American Agreement on Environmental Cooperation and the Border Environment Cooperation Agreement;
- The common policy arena on labour cooperation, created by the North American Agreement on Labor Cooperation;
- The common policy arena on the protection of foreign direct investment, created by the North American Free Trade Agreement's Chapter 11.

From these case studies, I reached conclusions that contest the arguments of current studies. First, I concluded that of all the cases analysed in this thesis, it is in the common policy arena on environmental cooperation that we have seen the greatest increase in policy interdependence between Canada, Mexico and the United States, and the highest institutionalisation of an arena. I argued that the use and application of the cross-border rules by transnational actors has resulted in the expansion of the arena. Such rules enabled transnational actors to protect the shared North American environment. Yet, these actors have demanded the expansion and improvement of rules provided by the national governments in the NAALC and BECA to address the policy externalities resulting from increased economic interaction between the three countries and better protect and enhance the environment in their own as well as in other national jurisdictions. In response, the regional institutions, namely the Commission for

Environmental Cooperation, Border Environment Cooperation Commission and the North American Development Bank, have been proactive in delivering these changes to the rules. I further argued that in doing so they act in a rational way, in an attempt to expand their own powers and jurisdiction over environmental matters in the region. I thus contend that their actions have consolidated the arena. In light of the growing number of rules and their frequent use by transnational and regional actors, I concluded that the common policy arena on environmental issues is the most institutionalised of all those analysed in this thesis.

In Chapter 7, I argued that the policy arena on labour cooperation has seen limited use of the cross-border rules set in place by the NAALC, and therefore the arena as a whole has been limitedly institutionalised. In comparison with the arena on environmental cooperation, this arena is structured by a limited number of cross-border rules, which have been less intensively used and applied by transnational actors and exhibits less disposition from the regional institutions to address transnational issues. I thus argued that this arena had expanded but not consolidated and it is characterised by a low degree of institutionalisation. I claimed that this outcome has resulted from the realisation by transnational actors –which in this arena are mainly trade unions and other labour groups– about the limits, and more importantly, the obstacles for the use of the cross-border rules set forth by NAALC. In this respect, I contended that given their experience with the International Labour Organization, the national governments wanted to avoid the creation of a strong regional institution and limit the public review of their decisions on labour matters. Therefore, the national governments deliberately placed upon the NAALC and its institutions constraints and obstacles to the use of the rules, to prevent any significant questioning of their behaviour and actions. I concluded that the obstacles to transnational actors to use the rules of the arena, the Commission's circumscribed powers, along with the lack of change in the behaviour of national governments resulting from the use of the Public Communications mechanism, have collectively prevented the consolidation of the common policy arena and resulted in a low degree of institutionalisation.

Finally, in Chapter 8, I analysed the common policy arena on the protection of foreign direct investment. Here, I argued that the policy arena on the protection of foreign direct investment has seen even less use of the cross-border rules set in place by NAFTA's Chapter 11 in comparison with the arenas on environmental protection and labour cooperation. Given that the rules are used very few times, the arena is not institutionalised –even if Chapter 11 is the most codified of all the agreements analysed in this thesis.

Contrary to the widespread assumptions and claims that the rules of Chapter 11 would be the most used of all of the rules established by NAFTA, it actually has very limitedly promoted integration, compared to the dynamics observed in other cases. Although Chapter 11 was specifically negotiated and implemented with foreign investors in mind, to date, only a few individuals and firms have used its rules to challenge the actions and decisions of the national, state, provincial and local governments regarding their treatment of foreign investors and investments. Despite being the most codified (and thus complex) agreement of all those discussed in this thesis, Chapter 11 created the least institutionalised common policy arena. I argued that this outcome is both the result of the obstacles placed upon foreign investors to use the cross-border rules of the arena, as well as the lack of regional institutions that can address the disputes between governments and foreign investors. I showed how, although the agreement did create an institutional structure to oversee and manage the *implementation* of the agreement, it did not create a regional institution with adjudicatory capacities to hear and resolve disputes. Instead, the agreement relies on the operation of extra-regional institutions to address these matters. I argued that transnational actors have encountered obstacles to engage with these institutions. Furthermore, due to their structure, I contended that these institutions are predisposed to protecting the interests of the national governments rather than those of transnational actors or their own. In light of all these circumstances, I argued that this arena is the one that exhibits the lowest interdependence among the three countries and the least institutionalised of all the cases analysed in this thesis.

In sum, while we can see a process of integration occurring in all the three arenas (inasmuch there is an intergovernmental agreement, cross-border rules and a regional institution in each of them) there are varying degrees of institutionalisation between them –i.e. significant policy interdependence in the environmental policy arena, little policy interdependence in the labour one and almost none in the arena on the protection of foreign direct investment. Therefore, the interpretation that there is less integration in the policy arenas on labour and (much less) on the arena on the protection of foreign direct investment would be appropriate.

However, the preferred manner to describe this difference between arenas would be to use the term of high (or low) institutionalisation, i.e. the degree of policy interdependence in a given arena.<sup>178</sup> Therefore, it would be appropriate to interpret that the change in the common policy arenas on labour and protection of foreign direct investment is less visible than on the environmental arena. As I argued in the abovementioned chapters, the labour and foreign investment protection arenas are less and much less, correspondingly, institutionalised than the arena on environmental protection.

#### 9.1. FURTHER RESEARCH

Through this analysis of the institutionalisation of these arenas, I have demonstrated that the phenomenon of regional integration in North America is more substantial than most of the literature claims. I have shown how common policy arenas have been created through intergovernmental bargaining, which has resulted in the entering of regional agreements and the creation of regional institutions to manage the rules created. In the following pages I address further questions that might derive or result from the research I have conducted and presented in this thesis.

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<sup>178</sup> As discussed in this thesis, integration is the overall phenomenon, which I defined as the process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence by entering into intergovernmental agreements. As I explain, the creation, expansion and consolidation of common policy arenas are all incidences of regional integration. In this sense, it would be inaccurate to assert that there is more (or less) integration in a specific common policy arena or an overall integration process than in others. For instance, it would be inaccurate to claim that there is ‘more’ regional integration on the common policy arena on environmental protection than in that of foreign direct investment protection. In all instances, a process of regional integration is occurring. It is only that the arena is more (or less) institutionalised.

9.1.1. IS THE REGIONAL INTEGRATION PROCESS IN NORTH AMERICA OF AN  
INTERGOVERNMENTAL OR SUPRANATIONAL NATURE?

At the moment, given the differing institutional structure between the arenas on protection and foreign direct investment, environmental protection and labour cooperation, and the rest of the main text of the NAFTA, it would be difficult to determine whether North American integration is a process of an intergovernmental or supranational nature *in general*. As argued in this thesis, to conduct a more accurate analysis of a regional integration process, it is necessary to look at specific arenas, in order to determine whether there is high or low institutionalisation, i.e. the degree of policy interdependence. As I argued in this thesis, there are varying degrees of institutionalisation across different arenas. Therefore, to make a judgement regarding whether North American integration *in general* is a process of an intergovernmental or supranational nature, one would have to analyse the (up to) 11 different policy arenas created by the abovementioned chapters (3-7, 10, and 12-17).

Yet, regarding the policy arenas analysed in this thesis, one could indeed argue that the policy arenas on labour cooperation and protection of foreign direct investment are of an intergovernmental nature. It is likely that the other arenas created by the main text of NAFTA will also be of an intergovernmental nature. However, using the term that Øhrgaard proposed to describe some policy arenas in the European process, I would argue that the arena on environmental protection is “less than supranational, more than intergovernmental” (1997, p.1).

Moreover, based on the arguments advanced in this thesis, I maintain that there are other common policy arenas in the integration process in North America that merit attention. I would offer a preliminary hypothesis, for example, that there is currently a common policy arena on wildlife and ecosystem conservation and management in North America, and that in the future a common policy arena on consumer product safety might emerge.

The arena on wildlife and ecosystem conservation and management was created through the agreement in 1996 that established the Trilateral Committee, which is charged with facilitating and enhancing cooperation between Canada, Mexico and the United States for the conservation

of species and the ecosystems of the three countries (Trilateral Committee, 2012). The creation and operation of this agreement and its Trilateral Committee thus mirrors that of the NAAEC and CEC. I would suggest that a detailed analysis of this arena would likely reveal the same dynamics that we have observed in the arena on environmental protection. At a glance, the arena is structured by only a few rules, and the regional institution in charge of administering the agreement, the Trilateral Committee, appears to have very limited powers to advance such rules. However, as I have argued in this thesis, the number of rules in an agreement is as important in the intensity of the use of such rules. A preliminary analysis of the arena suggests that there is significant engagement of transnational actors with the cross-border rules. Further research would be needed to determine with certainty how these rules are being used and whether the regional institution has played any further role besides administering the agreement.

Likewise, in 2013, the three countries agreed to create the North American Cooperative Engagement Framework on Consumer Product Safety to facilitate and enhance cooperation and the sharing of knowledge and expertise on consumer product safety. It is expected that in the next four years, the framework will develop into a more intense cooperative mechanism that will work “toward the common goal of achieving the highest level of safety for consumers throughout North America” (Health Canada, 2013). Although at this point these activities have not resulted in the creation of a fully fledged common policy arena, i.e. constituted by a regional agreement and managed by a regional institution, we can already observe that the same trends in the cases analysed in this thesis are present in the case of consumer product safety. For instance, the national governments have declared that they set the framework in response to “common challenges presented by the increased international trade and steady flow of consumer products among our jurisdictions” (Health Canada, 2013). Therefore, from the arguments that I have introduced and advanced in this thesis, it is possible that they will step up this cooperative framework in order to continue reaping the benefits of cross-border trade and to address the externalities resulting from these exchanges.

Further research on these and other arenas would contribute to gain increased understanding of the process of North American integration. More importantly, this research would surely contribute to greater systematisation of the theorisation of the process, thus enhancing our overall understanding of the present and future of North American integration.

#### 9.1.2. WILL NORTH AMERICA EVER BE AS INTEGRATED AS THE EUROPEAN UNION?

Probably the most relevant scholar to have addressed this issue is Domínguez Rivera, who asks whether North America (which he calls NAFTA) “will ever have an EU profile?” (2007, p. 3). He argues that “under different scientific assumptions and political motivations, most of the epistemic communities conceive a new stage in North America’s regional development; this phase could be predicted in a minimalist fashion, namely, proposing a superficial adaptation of NAFTA or in maximalist mode suggesting a European Union-like entity, or a combination of both” (2007, p. 11). The author goes on to map the field, discussing the works of scholars such as Hufbauer and Vega Cánovas (2003), who argue that North America could and should foster closer integration on the policy arenas on border management, regional security and immigration (a more general discussion of these works is also available on Andreas, 2003).

He also discusses the work of Dobson (2002), who proposed that Canada should devise, along with the United States and Mexico, a North American physical and economic security strategy which operated in the (policy) arenas of border security, immigration, regional energy security and regional defence. Also on this side of the debate is Pastor (2001) who, drawing from the experience of the creation of the EEC and EC, proposes that North America should foster increased cooperation in the arenas of cross-border infrastructure and transportation, immigration and customs and development, through the creation of regional institutions responsible for these policies. This idea is further discussed in Pastor (2011). Domínguez Rivera refers to all these authors as maximalists.

According to Domínguez Rivera, on the opposite side of this debate, we can find authors and analysts such as Barnett and Williams (2003) or D’Aquino (2003) who argue that the



institutional framework of North America should develop further, although through increased intergovernmental exchanges rather than the creation of bureaucratic superstructures. In their view, international structures such as that of the US-Canada International Joint Commission (IJC), which is discussed in this thesis (pages 109-110), would enable increased cooperation, first at the bilateral and, then, at the trilateral level.

As has also been discussed in this thesis, other authors, for instance Clarkson (2008), have discussed the question of whether North America should follow the path (or model) of European integration.<sup>179</sup> Authors such as Inglehart, Nevitte, and Basaf (1996), Chanona Burguete (2003) and Genna (2011) have all discussed whether and how regional integration in North America could and can progress from an intergovernmental process to a more ‘institutionalised’ –i.e. sovereignty-pooling and social-centric one. As these authors argue, it is indeed possible –and in their view, desirable– to foster further integration in North America. These authors argue that some policy arenas probably ‘need’ as much integration as it can be seen in the European Union, in order to improve current policy outcomes.

In sum, the question of whether NAFTA will ever become as integrated as the EU has been addressed in the literature by a vast number of scholars. Compared to the research question that underpins this thesis, which has only been addressed in a very limited way in the literature, the issue of the future of North America has received much greater attention in the scholarship. Yet, even if this question goes beyond the scope of my research, it is indeed a relevant one for future research.

## 9.2. APPLICABILITY OF THE THEORETICAL FRAMEWORK TO OTHER PROCESSES OF REGIONAL INTEGRATION

To conclude, I will address the issue of whether the theoretical framework and empirical findings that I have proposed and advanced in this thesis can be applied to other instances of integration processes in other world regions, such as those in South America and Asia. In line

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<sup>179</sup> As stated on page 32 of my thesis, these authors do tend to regard Europe as a political, social and economic model to follow.

with the arguments advanced in this thesis, I argue that it would *indeed* be possible to examine such processes using the concepts, arguments and framework that I proposed.

As with Caporaso, Marks, Moravcsik and Pollack, (1997); Jachtenfuchs (2001); and, Warleigh-Lack and Rosamond (2010), I argue that the assumed  $n=1$  problem in the field of (European) Integration Theory has led a number of scholars to disengage from the analysis of the causes, dynamics and effects of the *general* phenomenon of regional integration. As explained in Chapter 2, this assumed problem has prevented most scholars from generalising their findings, arguments and explanations for the occurrence and development of integration to other (possible) study cases in other world regions. As Caporaso puts it, “the increasing interest in [European integration] studies went hand in hand with the exclusion of other cases. As the sunk costs and asset-specific knowledge of European integration increased, the desire to ‘leave’ [the field], even for the purpose of drawing comparisons, decreased” (Caporaso, 1998, pp. 343-344).

However, to scholars who argue that the  $n=1$  problem prevents them from generalising their arguments and findings, Caporaso replies that “the distinctive mix of properties that makes for the EC/[EU] need not to prevent us from conceptualising it in more abstract terms. [...] This implies that our research include other cases than simply the EC/[EU]” (1998, p. 344). Similarly, Moravcsik argues that the concepts and theories generated to explain European integration can be generalised. According to him, the first step towards such “generalisation is to reconsider the EC in the context of attempts at regional integration elsewhere in the world” (1998, p. 494). In his view, a comparative analysis of this phenomenon should begin with the assumption that the explanations provided for explaining the occurrence and development of regional integration observed in post-war Europe are not just contingent to it (1998, p. 496).

Based on these arguments, as explained in section 2.2, some scholars have encouraged others “to develop general testable propositions that could be applied to all cases of regional integration” (Warleigh-Lack and Rosamond, 2010, p. 1005). In this thesis I aimed at explaining the occurrence and development of regional integration in North America, as well as proposing

a set of concepts and a revised theoretical framework that can also explain the occurrence and development (or lack thereof) of integration in general. As I repeatedly argued in this thesis, each one of the main concepts and arguments used and advanced derives from European integration theory. Yet, just as they can be used to analyse the integration process in North America, they can be used to analyse other processes such as those in South America or Asia.

As with Moravcsik, I argue that a comprehensive comparative study of the abovementioned integration processes “would take us well beyond the scope of this [thesis], but a preliminary comparison between East Asia, North America and Europe is possible” (1998, p. 494). In such comparison, it could be possible (and even encouraged) to use the concepts, arguments and theoretical framework that I proposed. And, just as Moravcsik, I would argue that the results of such preliminary comparison would “confirm the primacy of economic incentives for which I have argued in this [thesis]” and provide further support for the arguments I have advanced in favour of a revision of regional integration theories (1998, p. 494).

Let us first consider the South American case, usually but not exclusively grounded on the functioning of the Mercado Común del Sur or Southern Common Market (MERCOSUR). The foundations of the process date back to 1985, when Presidents Raúl Alfonsín of Argentina and José Sarney of Brazil agreed to and established the Argentina-Brazil Integration and Economics Cooperation Program (Burnell, Rakner and Randall, 2005, p. 84). Over time, the increased cross-border links between these two countries generated incentives to purposely expand trade and investment amongst them as well as with other countries in the Southern Cone. Yet, just as in the European and North American cases, the regional integration process proper began with the negotiation and then establishment of an economic agreement, the Treaty of Asunción, in 1991. This Treaty established a common market between Paraguay, Uruguay, Brazil and Argentina, which set common rules for the free movement of goods, services, and factors of production between the four countries and established a common external tariff as well as a common trade policy in relation to third States (World Trade Law, 2014).

The original treaty has been repeatedly updated to better and further promote free trade and the fluid movement of goods, people, and currency between these countries (MERCOSUR, 2014). Such updates and improvements have progressively expanded and deepened the institutional structure of MERCOSUR, which is far more complex than that in North America. Aside from the Council, Trade Commission and Secretariat, which we can also observe in NAFTA, there are also a number of *permanent* bodies that deal with trade controversies, social and labour issues and a Parliament, which started operating in 2007.<sup>180</sup> Despite these institutional differences, it could be argued that there is an analogous regional integration process occurring in MERCOSUR. Following the definition and transaction-based framework that I proposed in this thesis, it could be argued that MERCOSUR is indeed another case of regional integration worth studying, in which the framework that I proposed in this thesis could be applied.

First, the process resulted from a deliberate decision of the national governments of Argentina and Brazil, the economically largest economies in the region, to foster trade and investment between their countries. Brazil and Argentina traded more with each other than with any other country in the region and thus had great incentives to pursue the integration of their economies.<sup>181</sup> As defined in this thesis, regional integration is the process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence, in order to enhance cross-border exchanges or address policy externalities. Indeed, Brazil and Argentina's (formerly) growing levels of trade constitute a significant part of the overall

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<sup>180</sup> The institutional structure of MERCOSUR is constituted by five closely related bodies, as follows: the Common Market Council (CMC), which sets policies and regulations for its member-states and assesses compliance with them; the Common Market Group (CMG), which "coordinates macroeconomic policy between the members, [...] negotiates trade with non-member countries, [and] oversees the implementation of decisions made by the Common Market Council" (Keller, 2012); the Trade Commission, "which is responsible for counselling and enforcing trade policies' instruments [and] guidelines" (MercoPress, 2014); the Parliament, a body with no enforcement powers which advises the abovementioned decision-making bodies; and the Secretariat, which coordinates and supports the administration of MERCOSUR and provides technical assistance to other regional bodies. Aside from these bodies, MERCOSUR is constituted by two tribunals, one on trade and another one on labour issues, a consultative forum on social and economic issues, and a number of committees, ad hoc groups, work groups and specialised bodies on various other technical issues (for a full list of such bodies see Secretaría del Mercosur, 2014).

<sup>181</sup> For instance, since 2000, Brazil's trade in goods with Argentina has more than doubled, while Argentina's trade with Brazil has grown almost four-fold. In 2000, Brazil exported to Argentina 6.03 billion USD in goods, while Argentina exported to Brazil 6.9 billion USD (GMM, 2014). At its peak in 2011, Brazil exported 16.9 billion USD worth of goods to Argentina, while the reverse flow was 22.1 billion (WTO, 2014). Foreign direct investment shows a similar trend, at least on the Brazilian side. To this date, Argentina remains as the main destination for Brazilian investment in Latin America and a net recipient of FDI overall (Committee on Foreign Relations, 2008; US Department of State, 2013).

explanation for the occurrence and development of regional integration in South America's MERCOSUR.

Moreover, a transaction-based theory could also account for some of the issues that MERCOSUR is currently facing, for instance on the politically controversial expansion of its membership and the difficulties that the bloc has faced to reach a deal with the EU. On the first issue, it could be argued that the accession of Venezuela to MERCOSUR departs from this economic rationale. Overall, Venezuela trades more with extra-regional partners, i.e. the European Union, China and the United States, in that order, than with its South American neighbours. At its peak in 2008, it even traded more in goods with Colombia (6.9 billion), its partner in the Andean Community (Comunidad Andina de Naciones, CAN), than with Brazil (4.27 billion), which is the largest economy in South America (WTO, 2014). Yet, since such peak, its trade with Colombia and the rest of the Andean Community had steadily fallen, while its trade with Brazil expanded.<sup>182</sup> Even if Venezuela's accession to MERCOSUR is politically controversial and was indeed blocked "for years by [Paraguay] because of concerns about Chavez's democratic credentials" (BBC News, 2012), ultimately such preoccupations yielded to economic interests in increasing trade (especially in energy commodities) between MERCOSUR and Venezuela. A transaction-based argument which looked at the shifting flow of Venezuela's regional trade would thus provide a better overall explanation of this development than a theory centred on geopolitical concerns.

Likewise, the lack of consensus between the MERCOSUR members on the issue of the establishment of a trade agreement with the EU can also be explained better through a transaction-based theory, rather than through other kinds of explanations, including geopolitical ones. Currently, MERCOSUR and the EU are attempting to reach a free trade accord. The executive branches of the EU and Brazil have expressed their interest in securing the agreement (Gardner, 2014). Yet, other members of MERCOSUR, particularly Argentina and Venezuela, are not as keen on pursuing such deal. It could be argued that the reason for such disagreement

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<sup>182</sup> In 2011, one year before its accession to MERCOSUR, Venezuela's trade with Colombia reached a low unseen in about a decade (1.5 billion USD)

is the left-leaning political stance of the heads-of-state of the two latter countries which have “systematically stymied [the deal, due to their] protectionist policies” (De Onis, 2013). Yet, as I would argue, this would be a deficient explanation. The administrations of Uruguay and Brazil, the MERCOSUR members more actively involved in securing a deal with the EU, can be also described as leftist. Therefore a theory based on the analysis of ideological commitments of national administrations would provide a deficient explanation of this development. Instead, an explanation based on the analysis of transnational exchanges and the policy externalities resulting from such exchanges would provide a better explanation for the impasse between the MERCOSUR members over a trade agreement with the EU.

First, faced with foreign currency exchanges crises, Argentina and Venezuela are not keen to further open their markets to extra regional partners.<sup>183</sup> Second, the issue of free trade in agricultural products has caused a rift between the MERCOSUR members. At the core of this dispute is the issue of agricultural subsidies in the EU and the differing positions that the MERCOSUR partners have on it. On the one hand, heavy exporter and liberalising Brazil, is willing to leave the issue of farm subsidies in the EU out of the trade negotiations (at least temporarily).<sup>184</sup> This is because Brazil “needs a spur to its economic growth and would likely rather [seal] the deal on its trade pact with the EU” (Walter, 2014). Yet, potential exporter but tightly government-controlled Argentina would prefer to address the issue as part of the negotiations.<sup>185</sup>

However, the common rules established by both governments under MERCOSUR rules prevent them from moving forward with the negotiations. “That's why [the Brazilian] government cannot simply sign the agreement –it has to be approved by the other MERCOSUR members”

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<sup>183</sup> Despite its opposition Venezuela “will be out of the negotiations since it only very recently became a full member of MERCOSUR” (MercoPress, 2014).

<sup>184</sup> “According to the Organisation for Economic Co-operation and Development (OECD), state support accounted for 5.7% of total farm income in Brazil during 2005-07. That compares with 12% in [the US], 26% for the OECD average and 29% in the European Union” (The Economist, 2010).

<sup>185</sup> For instance, in February 2014, Argentina’s “foreign minister Hector Timerman said that the EU subsidies policy to its farmers ‘could lead to a difficult situation to resolve, since one of the objectives of MERCOSUR is the opening of agriculture markets [which is at odds with the EU’s] level of protectionism [which is] very much higher than what is acceptable for us’” (MercoPress, 2014). However, despite the importance of the issue for Argentina, President “Cristina Fernandez does not believe the EU will effectively address its farm subsidies policy” (MercoPress, 2014).

(2014). In MERCOSUR, thus, there is a high institutionalisation of the policy arena on extra regional trade. In other words, there is vast policy interdependence between member states to the point that their actions are bound by those of other members. I argue that in the case of the MERCOSUR's common policies on extra regional trade, it is likely, that the economically largest country will continue pressing its partners in order to achieve its goal of an EU-MERCOSUR trade agreement.<sup>186</sup>

For Brazil, the value of intraregional trade has decreased, while the EU has become its largest trading partner.<sup>187</sup> For this reason, I argue that Brazil (and Uruguay, to a lesser extent) will continue pressing Argentina until it agrees to negotiate an EU-MERCOSUR deal, regardless of the issue of agricultural subsidies in the EU. Should Argentina oppose such a deal, it would risk losing the economic gains created by the continued operation of the common intraregional and extra regional trade rules established by MERCOSUR. Meanwhile, Brazil has incentives to persuade Argentina to maintain the common intra and extra regional rules, which sustain its trade with its neighbours in other important sectors such as the auto industry. This is indeed what happened. As of 30 April 2014, sources suggest that MERCOSUR will present its joint proposal for the negotiation and establishment of a trade agreement with the EU and that the change in the position of the Argentinean government was the key to achieving such outcome (ABC, 2014; El País, 2014; MercoPress, 2014).

As can be seen from the case of MERCOSUR, the concepts, main arguments and theoretical framework of this thesis are relevant to the analysis of the occurrence and development of regional integration in other world regions. The framework I introduced can be used to explain policy developments in MERCOSUR in a more accurate way than theories centred on the analysis of geopolitical concerns or ideological commitments of national governments. Now let

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<sup>186</sup> It is important to examine the role of transnational actors in this disagreement. Exporters in Brazil have grown increasingly impatient with the Argentinean position and actions against freer trade within and outside MERCOSUR. For instance, in past years, the Argentinean government introduced formal and informal restrictions on imports in order to improve its trade balance and secure much-needed foreign currency. Meanwhile, "Brazilian goods were stopped [at the border with Argentina] and this issue that was upsetting our exporters" (Nejamkis, 2013) and led them to pressure the Brazilian government on these issues.

<sup>187</sup> Nowadays, Brazil trades more with the EU (47.6 billion), than it does with China (46 billion) and the United States (24.8 billion), and far more than it does with Argentina, its largest partner in MERCOSUR (19.6 billion USD) (WTO, 2014).

us briefly consider the case of the Association of South East Asian Nations (ASEAN) in order to provide one more case of regional integration which might be examined using the theoretical framework I proposed in this thesis.

ASEAN is the most advanced regional integration process in South-East Asia. While other cooperation *arrangements* exist in the subcontinent, none has established institutions such as those observed in ASEAN. The Association of South East Asian Nations was established in 1967 through the signing of the Bangkok declaration between Indonesia, Malaysia, the Philippines, Singapore and Thailand. Its main aims were to accelerate economic growth and social progress and development in the region and collaboration and mutual assistance on various matters of common interest, including economic and social issues.

In light of this description, it could be argued that the motivations for the establishment of ASEAN differ from those observed in the EU, NAFTA and MERCOSUR. Geopolitical motivations *indeed* led to the signing of the Bangkok declaration. Some of these reasons included these countries' common concerns about the expansion of communism in Eastern Asia and intervention or aggression by extra regional powers as well as their mutual desire to reduce distrust amongst them. Other motivations included the promotion of domestic political stability within their own countries through cooperation for socioeconomic development. Brunei joined ASEAN in subsequent decades on similar grounds.

However, it was not until the establishment of the ASEAN Free Trade Area (AFTA) Agreement in 1992 that the integration process can be said to have properly started. As defined in this thesis, regional integration is the process whereby sovereign nation-states in the same geographic area develop and further their policy interdependence *through their participation in intergovernmental agreements, the establishment of regional institutions and the setting of transnational rules*. While the governments of these countries indeed held summits, conducted consultations at the executive level (and within working groups) and there were expressions of understanding and commitments for cooperation on various policy issues, there were *no*



*regional institutions or common rules* in place. In this respect, it is important to remember that the ASEAN Secretariat –the first regional institution– was established in 1976, more than 9 years after the signing of the Bangkok Declaration (ASEAN, 2014). Moreover, it was not until 1992, when ASEAN set the first common rule in the form of the Common Effective Preferential Tariff (CEPT) scheme (United Nations, 2002; ASEAN, 2014).

It would therefore be inaccurate to argue that the start of ASEAN as an actual regional integration process started before 1992. Instead, I argue that until 1992 ASEAN had not completed the triad of elements that differentiate regional integration *processes* from regional *arrangements*: the establishment of intergovernmental agreements, the creation of regional institutions and the setting of transnational rules. Indeed, after the establishment of such common rules, the process expanded in both membership and scope. Myanmar (Burma), Cambodia, Laos, and Vietnam joined in subsequent years, and the ASEAN institutional structure is now comprised of a Chair, and Coordinating and Community Councils, Sectorial Ministerial Bodies, a Committee of Permanent Representatives and National Secretariats all with responsibilities comparable, or greater, than their equivalents in MERCOSUR and NAFTA.

I would argue that this development and expansion of ASEAN is underpinned by the same logic observed in MERCOSUR and NAFTA. In 1967, when the Association was established, intra-regional trade accounted for 12% of total ASEAN trade (United Nations, 2002, p. 33). Nowadays, intra-ASEAN trade accounts for about 26% of the region's total trade with the world (US International Trade Commission, 2010, pp. 2-13). As ASEAN's intraregional share of its total trade with the world increases, it is likely that transnational actors will make increasing use of the common rules, both trade- and non-trade-related. As national governments realise the economic opportunities and gains created by the common rules it is very likely that they will pursue further expansion and enhancement of such rules.

In fact, on December 2015, ASEAN is set to move forward in its integration process, by establishing a new set of common policies and regulations, collectively named as the ASEAN Economic Community (AEC), which is designed to replicate a number of policy attributes of the EU (Springer, 2014). This set of policies appears to be the national governments' response to a number of policy externalities caused by the increasing trade flows between them (although this would have to be more adequately and thoroughly researched). The joint measures that will be set include the setting of rules for closer consultation on macroeconomic and financial policies, the creation of enhanced infrastructure and communications connectivity and the promotion of greater integration of industrial production chains, aimed at freeing the movement of goods, services, investment, skilled labour and further liberalising the flow of capital in the region (ASEAN Secretariat, 2014). While further research would be required to ascertain whether and what roles the ASEAN institutions and transnational actors have played, the theoretical framework that I proposed in this thesis suggests it is possible (and likely) that they had input in these developments.

In conclusion, as I stated in this thesis, the concepts, arguments and theoretical framework that I proposed could indeed be used to examine other integration processes in other world regions.

# ANNEXES

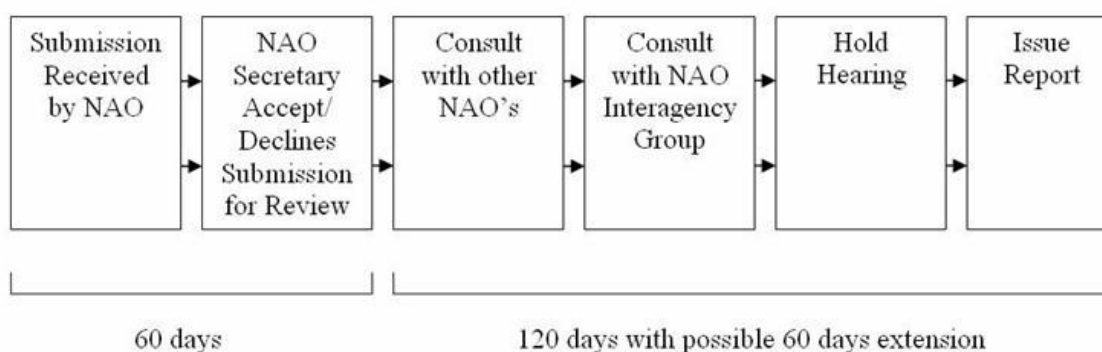
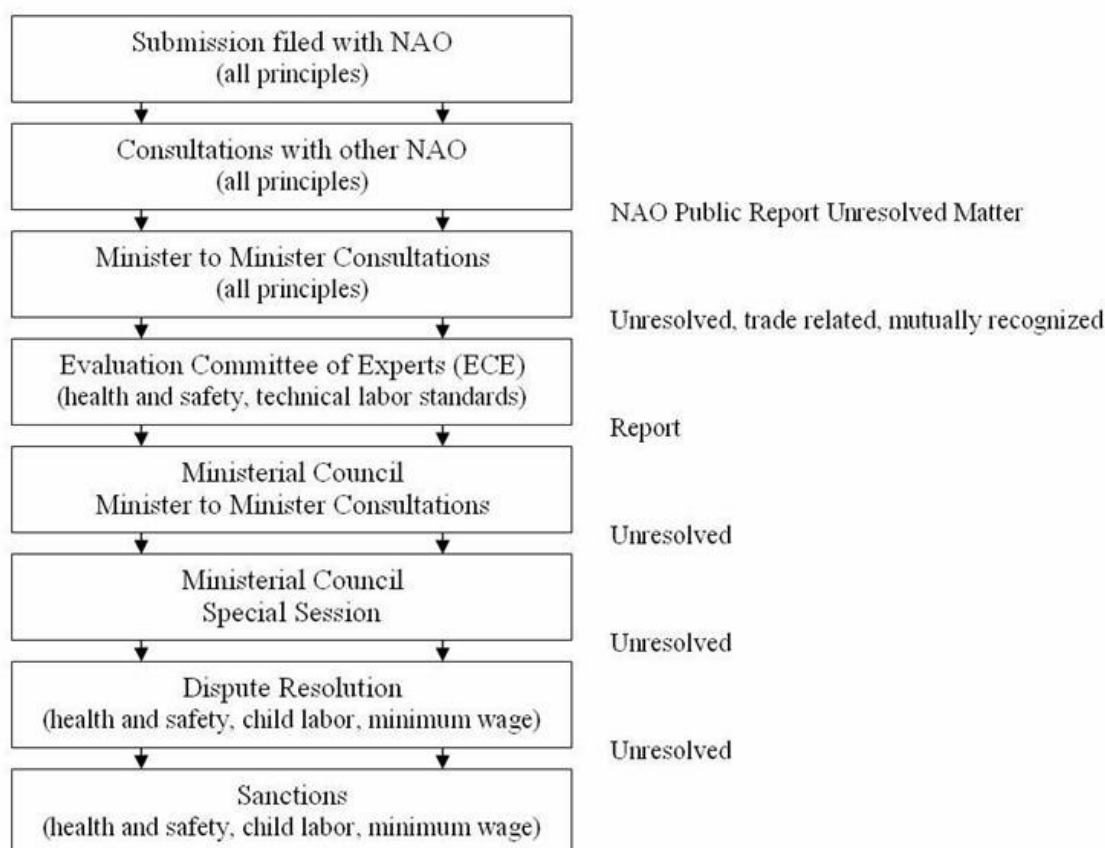
## THE 11 LABOUR PRINCIPLES OF THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

- 1) Freedom of association and protection of the right of workers to freely establish and join organisations of their own in order to further and defend their interests.
- 2) The right to bargain collectively on matters concerning the terms and conditions of employment.
- 3) The right of workers to strike to defend their collective interests.
- 4) Prohibition and suppression of all forms of forced or compulsory labour.
- 5) Labour protections for children and young persons.
- 6) Minimum employment standards, which establishes regulations on minimum wages and overtime pay for workers, including those not covered by collective agreements.
- 7) Elimination of employment discrimination on grounds of race, religion, age, sex or other grounds, and establishes practices, rules or special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.
- 8) Equal pay for women and men for equal work in the same establishment.
- 9) Prevention of occupational injuries and illnesses, which prescribes and implements standards to minimise their causes.
- 10) Compensation in cases of occupational injuries and illnesses, which establishes and grants access to a system of benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

- 11) Protection of migrant workers, which provides workers in the territory of a Party to NAALC with the same legal protection as the Party's nationals in respect of working conditions (NAALC, 2012).

## THREE-LEVEL PROCESS OF THE NAALC

### Process and timeframe:



Source: Secretariat of the Commission for Labor Cooperation (2012)

# OUTCOME OF NAFTA'S CHAPTER 11 CASES

OUTCOME OF NAFTA'S CHAPTER 11 CASES (ARBITRATED AND CLOSED) AGAINST CANADA (1994-2013)		
<b>St. Marys VCNA, LLC</b>	Settled	2011
<b>V. G. Gallo</b>	Respondent + Payment to respondent	2007
<b>AbitibiBowater Inc.</b>	Claimant	2010
<b>Centurion Health Corporation</b>	Respondent + Payment to respondent	2009
<b>Chemtura Corp.</b>	Respondent	2002
<b>Dow AgroSciences LLC</b>	Settled	2009
<b>Ethyl Corporation</b>	Settled	1997
<b>Merrill and Ring Forestry L.P.</b>	Respondent	2006
<b>Pope and Talbot Inc.</b>	Claimant/Respondent + Partial payment to claimant	1999
<b>S.D. Myers Inc.</b>	Claimant + Partial payment to claimant	1998
<b>United Parcel Service of America, Inc.</b>	Respondent	2000
<b>Pending:</b>		
<b>Windstream Energy; Clayton/Bilcon; Detroit International Bridge Company; Mercer International; Mesa Power Group; and Mobil Investments Inc. and Murphy Oil Corp.</b>		

Source: DFAIT (2012)

<b>Outcome of NAFTA's Chapter 11 cases (arbitrated and closed) against the US (1994-2013)</b>		
<b>ADF Group Inc.</b>	Respondent	2000
<b>Apotex Inc. (II)</b>	Respondent +Payment to respondent	2009
<b>Apotex Inc. (I)</b>	Respondent +Payment to respondent	2008
<b>Canadian Claimants</b>	Respondent	2005
<b>Glamis Gold Ltd.</b>	Respondent + Payment to respondent	2003
<b>Grand River Enterprises Six Nations, Ltd.</b>	Respondent	2004
<b>The Loewen Group, Inc. and Raymond L. Loewe</b>	Respondent	1998
<b>Methanex Corp.</b>	Respondent + Payment to respondent	1999
<b>Mondev International Ltd.</b>	Respondent	1999
<b>(Softwood Lumber Consolidated Proceeding) Canfor Corporation Terminal Forest Products Ltd. Tembec Inc. et al.</b>	Respondent + Payment to respondent	2002 <sup>188</sup>
<b>Pending:</b>		
<b>Apotex Holdings Inc. and Apotex Inc, CANACAR, Domtar Inc., and Kenex Ltd.</b>		

Source: US Department of State (2013)

<sup>188</sup> Canfor filed its claim on 2002; Tembec on 2003; and Terminal Forest on 2004. However, because the three cases were later consolidated into one, I take into account the date of the first claim.

<b>Outcome of NAFTA's Chapter 11 cases (arbitrated and closed) against Mexico (1994-2013)</b>		
<b>Cargill Inc.</b>	Claimant	2004
	+ Payment to claimant	
<b>Azinian</b>	Respondent	1997
<b>Metalclad Corporation</b>	Claimant	1997
	+ Partial payment to claimant	
<b>Waste Management Inc. (II)</b>	Respondent	2000
<b>Marvin Roy Feldman Karpa</b>	Claimant	1999
	+ Partial payment to claimant	
<b>Fireman's Fund Insurance Company</b>	Respondent	2001
<b>Waste Management Inc. (I)</b>	Respondent	1998
<b>GAMI Investments, Inc.</b>	Respondent	2002
<b>Thunderbird</b>	Respondent	2002
	+ Partial payment to respondent	
<b>Bayview</b>	Respondent	2005
<b>Archer Daniels Midland Co. and Tate &amp; Lyle Ingredients Americas, Inc.</b>	Claimant	2004
	+ Partial payment to claimants	
<b>Corn Products International</b>	Respondent	2003
<b>No cases pending</b>		

Source: Secretaría de Economía (2013)

The only cases successful for the claimants were Cargill; Metalclad; Marvin Roy Feldman Karpa; Archer Daniels Midland Co. and Tate and Lyle Ingredients Americas, Inc. The only case in which the claimants had to pay Mexico fees and costs was Thunderbird. Correct as of July 2013.



STATISTICS AND CALCULATIONS FOR THE GDP OF NORTH AMERICA IN 1990 AS PROVIDED BY  
THE GOVERNMENTS OF CANADA, MEXICO AND THE UNITED STATES

According to statistics provided by the corresponding national governments: In 1990, Canada reported a GDP of 679,921,000,000 Canadian Dollars (CAD) at 2009 prices (Statistics Canada, 2009). At an exchange rate of 0.87887 US Dollars (USD) per 1 CAD at 2009 prices (Antweiler, 2009), the GDP of Canada in 1990 equals 597,562,169,270 USD of 2009, which equals 629,273,460,549 at 2011 prices (US Inflation Calculator, 2011), or approximately 629 billion USD at 2011 prices. In the same year, Mexico reported a GDP of 738,897,500,000 Mexican Pesos (MXP) at 1993 prices (Instituto Nacional de Estadística y Geografía, 2011; Cámara de Diputados, 2003). At an exchange rate of 0.32051 US Dollars (USD) per 1 MXP at 1993 prices (BajaEco, 2011), the GDP of Mexico in 1990 equals 236,824,037,725 USD of 1993, which equals 370,268,237,030 at 2011 prices (US Inflation Calculator, 2011), or approximately 370 billion USD at 2011 prices. Also in 1990, the United States reported a GDP of 8,027,100,000,000 USD at 2005 prices (US Department of Commerce, 2011) which equates to 9,285,706,534,562 USD or approximately 9,285 billion USD at 2011 prices. Therefore, according to own calculations, the combined GDP of the NAFTA countries in 1990 at 2011 prices was: 10,284 billion USD.

STATISTICS AND CALCULATIONS FOR THE GDP OF NORTH AMERICA IN 1990 AS PROVIDED BY  
THE UNITED NATIONS

According to statistics provided by the United Nations Statistics Division, in 1990, the GDP of Canada was 582,735,317,435, or approximately 582 USD billion; the GDP of Mexico was 288,013,068,354, or approximately 288 USD billion; and the GDP of the United States was 5,754,800,000,000, or approximately, 5,754 billion USD (UNData, 2011). Therefore, according to United Nations, the combined GDP of the NAFTA countries in 1990 at 1990 prices was 6,625 billion USD, which equates to 11,451,669,854,628 USD, or approximately 11,451 billion at 2011 prices.

Statistics for the Population of North America in 1990:

In 1990, the United States had a total population of 248,709,873 (US Census Bureau, 2011); Mexico had a total population of 81,249,645 (Instituto Nacional de Estadística y Geografía, 2011); and Canada had an estimated population of 27,697,500 (Government of Alberta, 2005). For Canada, the figure is an estimation made by the Ministry of Agriculture and Rural Development of the Government of the Province of Alberta, based on data provided by Statistics Canada, as the next the national census was not due until the next year. Indeed, in 1991, Canada had a total population of 27,297,000 inhabitants (Statistics Canada, 2010).

## STATISTICS AND CALCULATIONS FOR THE GDP OF THE EUROPEAN COMMUNITY IN 1990

According to data compiled by the statistical office of the European Commission, Eurostat, the GDP of the EC 12 in 1990 was about 4,993,677 million Euros at 1990 prices (Eurostat, 2011), what would equate to 7,196,387,920,000 USD or approximately 7,196 billion USD at 2011 prices. However, a harmonised European statistical system to measure the Gross National Product (GNP) and Gross Domestic Product (GDP) of the member countries was not implemented until 1995, when the European System of Accounts 1995 (ESA 95), became the standard for gathering national accounts statistics. Therefore, before this year, it is difficult to “arrive at a consistent, reliable and comparable quantitative description of the economies of the Member States” (Eurostat, 1996) making this figure unreliable at best. For instance, data was not available for the years 1989, 1990 and 1991 for some EC 12 countries, thus preventing the making of an accurate estimate. On its part, the U.S. Department of State maintains that the total GDP of the EC 12 countries in 1990 was “6 trillion” at 1993 prices (US Department of State, 1993), what would equate 9,380,844,290,657 USD, or 9,380 billion USD at 2011 prices. However, since methodology or data supporting this estimate is not available, the figure provided by Eurostat is preferred. It is important to note in October 1990, the German Democratic Republic re-unified with the Federal Republic of Germany, thus adding more population and an enlarged market to the EC, but not a new member. In this figure, the Gross Domestic Product (GDP) of the German Democratic Republic has been added to the total GDP of the European Community (EC).

## STATISTICS FOR THE POPULATION OF THE EUROPEAN COMMUNITY IN 1990

In 1990, the European Community (EC) was composed of Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain and the United Kingdom. While the French National Institute of Demographic Studies maintains that the total population of the EC of 12 in 1990 was 331 million (Institut National D'Études Démographiques, 2010), the U.S. Department of State estimates that the total population neared the 345 million (US Department of State, 1993).

PERSONAL COMMUNICATIONS VIA E-MAIL REFERENCED IN THIS THESIS

Email from Professor Rafael Gely at University of Missouri



## HAVE THE ACTIONS OF THE NAOs GONE BEYOND THE ACTUAL PROVISIONS AND CAPACITIES OF THE NAALC?

As stated in this thesis, the actions of the NAOs in the cases reviewed went beyond the actual provisions of the NAALC and their own capacities. At times, the regional institutions' actions went beyond their capacities and provisions of the NAALC. For instance:

- As stated on page 200, the U.S. NAO was progressive in its interpretation of the Agreement with regard to the Honeywell and General Electric cases. Rather than limiting itself to gathering publicly available information as established in the agreement's Article 16 (2), it decided to request information directly from petitioners, companies and the Mexican government.
- As stated on page 200, contrary to what national governments had intended in the NAALC, the NAO decided that Public Communications could address violations of labour laws and standards specific to the companies in question, rather than just general failures by the national governments to implement such laws, as established in the Agreement's Article 27(1). In this way, the NAO interpreted the agreement flexibly and "fell closer to what petitioners and other labour activists [had] wanted" from the mechanism (Graubart, 2008, p. 69).
- As stated on page 205, "in December 1996, the US NAO accepted the submission for review and scheduled a public hearing on the matter. The NAO acted proactively in favour of the submitters. First, it decided that the hearing would take place in Tucson, Arizona, the city where Maxi-Switch Inc. is based. This was one of the first times that the US NAO would hold a hearing outside Washington, DC, in order to facilitate the gathering of information and the participation of the submitters and witnesses in the hearings. The submitters of this and other Public Communications had requested this change arguing that workers, as well as representatives of the unions and the company, would face fewer hurdles to render testimony on the events and practices denounced in the complaint. The NAO responded to these demands." In this case, the NAO went beyond the provisions of the agreement, by proposing to hold a public hearing, which goes beyond the provisions of NAALC's Article 16(2), which only states that "each NAO shall promptly provide publicly available information". In this case, the US NAO "reviewed such matters, as appropriate, in accordance with domestic procedures", as established on Article 16(3). Notably, in this case, the procedural guidelines of the US NAO went *beyond* the NAALC, enabling the US Secretary of the NAO (not the same as

US Secretary of Labor), to “hold promptly a hearing on the submission [in order to carry] out the Office's responsibilities” (US Department of Labor, 1994).

- As stated on pages 209, in the North Carolina case, the Mexican NAO requested its US counterpart to hold technical consultations in order to extend its understanding of the issue at hand. Yet, in the absence of a prompt response, it stepped up the pressure on its US counterpart by making an “immediate call for answers to questions” on the progress made in granting collective bargaining rights to public sector workers in North Carolina (UE News Update, 2007). This stronger call for action went beyond the collaborative approach that was expected from a National Administrative Office, according to Articles 20 and 21 (1,2) of the NAALC. Such articles state that NAOs “may request consultation [...] with another NAO in relation to the other Party's labor law, its administration, or labor market conditions in its territory. The requested NAO shall promptly provide such publicly available data or information, including: descriptions of its laws, regulations, procedures, policies or practices; proposed changes to such procedures, policies or practices; such clarifications and explanations related to such matters, as may assist the consulting NAOs to better understand and respond to the issues raised” (NAALC, 2012). However, NAOs cannot demand answers, as this would go against the promotion of cooperation and consultation, which is at the core of the NAALC.

It is for these reasons that I argue that the actions of the NAOs in the cases reviewed and discussed above went beyond the actual provisions of the NAALC and their own capacities.

Similarly, transnational actors have used the NAALC in ways that were not necessarily intended to be promoted by the agreement's negotiators. As other authors, [e.g. Compa (1997c; 1999; 2001), Graubart (2008) and Kay (2011), referenced on page 192], I argue that the possibility of elaborating and submitting a complaint is one of the major advantages of the NAALC for the protection of labour rights and standards in North America. Although it was expected that labour unions or other groups would engage with the Public Communications procedure, it was probably not expected that labour unions and other groups would significantly engage with it, given the constraints deliberately placed upon it. Yet, non-governmental actors in the three states have consistently and increasingly cooperated to file complaints, organise public campaigns around Public Submissions in order to prompt changes in government policy, and created regional support networks and other fora aimed at discussing and supporting their common interests in the labour and other policy arenas.

For these reasons, as I argued in this thesis, the NAALC provided the North American public, with a procedure for reviewing alleged failures by a North American country to comply with their own labour laws. The quasi-judicial provisions established for the submission of Public Communications fostered cross-border consultation, collaboration and support which has contributed to generating transnational relationships and commitments between workers, unions and other labour and social groups in the three countries.

## ARE NATIONAL GOVERNMENTS STABLE ACTORS?

In this thesis, I argue that national governments are stable actors. That is, national governments are political and economic entities that do not disappear suddenly. Thus their nature is fundamentally different to that of other governmental (e.g. state and local governments) and non-governmental actors (e.g. firms). In this sense, the functions and responsibilities of the national governments cannot be replaced (e.g. be delegated) to other larger or smaller political entities. In brief, national governments are stable actors because they take upon responsibilities and fulfil duties that other actors could not straightforwardly assume or deliver.

In support of this argument, Mann argues that states provide services that cannot and have not been replaced by other intra-state or interstate institutions, such as defending and protecting their corresponding territories and populations from external aggression and conducting macroeconomic planning (1993, p. 137). I argue that these functions, which Mann attributes to the state, are actually taken upon and delivered by national governments. As argued in this thesis, national governments possess material and immaterial resources (e.g. political legitimacy) that no other subnational or supranational actor possesses and therefore bear responsibilities that cannot be attributed or effectively conducted by other actors. National governments deliver public goods –national security, economic welfare, maintenance of legal and judicial systems, provision of inter-state or inter-provincial communications infrastructure– that are not provided by other actors. Moreover, due to the capacities and the resources they possess, nation-states can enter into contracts or agreements that other actors would not be able to (for instance, they can commit and are normally responsible for repaying defaulted loans or awarding damages owed to or incurred in by subnational authorities).

I argue that this understanding of national governments as stable actors is consistent with the behaviour of North American states, as well as most states throughout the world.<sup>189</sup> For instance, in its Memorial to the Metalclad case, Mexico reaffirmed to the Tribunal that the national government “was, and remains, prepared to proceed on the assumption that normal state of responsibility applies; that is, that the Respondent can be internationally responsible for the acts of state organs at all three levels of government” (Perezcano Díaz, 1999, p. 46). It can thus be seen that the national government of Mexico is a stable actor inasmuch it assumes responsibilities and bears duties that other actors could not. As Stone Sweet and Sandholtz argue, while national *administrations* and parties in power can “come and go” (1998, p. 41), the responsibilities and functions of national *governments* remain. For these reasons, I argue that national governments are stable actors.

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<sup>189</sup> It could be argued that the exception to this argument would be so-called failed states.



To further clarify this sentence, I argue that the statement ‘national governments are by definition stable actors’ does not entail that national governments have stable preferences. Indeed, Supranational Governance theorists argue that some Liberal Intergovernmentalists have failed to acknowledge that states might change their preferences over time. For instance, Pierson (1998, in Stone Sweet and Sandholtz, 1998, p. 41) argues that:

intergovernmentalist theories tend to treat the institutional and policy preferences of member-states as essentially fixed. [In their view,] it may make some sense to assume stable preferences when [...] one discusses issues of grand diplomacy. However, as one moves from traditional foreign policy issues [...] toward the traditionally ‘domestic’ concerns [...] this becomes a more dubious promise.

These arguments are consistent with the theoretical propositions made in this thesis. That is, national governments might change their preferences over the general issue of regional integration and their role in and the expansion (or lack thereof) of different common policy arenas, depending on other economic, social and political issues they might be facing at the time. As Pierson further argues, “the policy preferences of member-state governments may shift for a number of reasons. Altered circumstances or new information may lead governments to question previous arrangements” (1998, p. 41).

Even Moravcsik (1998), one of the foremost Liberal Intergovernmentalist scholars, argues that preferences can vary across time and policy arenas. According to this author, “the failure to take variation in state preferences seriously has introduced bias into [...] recent research programs. No assumption of conflictual or convergent preferences would capture the subtly varied preferences of governments concerning trade, agriculture, money and other issue areas” (p. 21). In sum, Supranational Governance theorists, and even some Liberal Intergovernmentalists, argue and acknowledge that state preferences on different policy issues vary across time and arenas.

In conclusion, the claim that “national governments are by definition stable actors” does not entail that national governments have stable preferences. It only entails that national governments do not ‘disappear overnight’.

## BIBLIOGRAPHY

- Abbott, K. W., and Snidal, D. (2000). Hard and Soft Law in International Governance. *International Organization*, 54(3), 421-456.
- ABC. (2014, April 30). *Acuerdo Mercosur y UE en junio, según Brasil*. Retrieved April 30, 2014, from ABC: <http://www.abc.com.py/edicion-impresa/politica/acuerdo-mercosur-y-ue-en-junio-segun-brasil-1240002.html>
- Abray, T. (2001, May 12). *Metalclad and Mexico*. Retrieved July 16, 2013, from Indymedia Print Project: <http://print.indymedia.org/news/2001/05/255.php>
- Adams, R. J., and Singh, P. (1997). Early Experience with NAFTA's Labour Side Accord. *Comparative Labor Law Journal*, 18(2), 161-181.
- Adler, M. (2012). Collective Identity Formation and Collective Action Framing in a Mexican "Movement of Movements". *Interface*, 4(1), 287 - 315.
- AFL-CIO. (2012). *NAFTA*. Retrieved April 4, 2012, from American Federation of Labor and Congress of Industrial Organizations : <http://www.aflcio.org/Issues/Trade/NAFTA>
- Aguilar Álvarez, G., and Park, W. W. (2003). The New Face of Investment Arbitration: NAFTA Chapter 11. *Yale Journal of International Law*, 28(2), 365-407.
- Alston, P. (2005). *Working Paper No. 4: Facing Up to the Complexities of the ILO's Core Labour Standards Agenda*. Retrieved April 3, 2012, from Center for Human Rights and Global Justice, New York University School of Law: <http://www.chrgj.org/publications/docs/wp/Alston%20Facing%20Up%20to%20the%20Complexities%20of%20the%20ILO's%20Core%20Labour%20Standards%20Agenda.pdf>
- Anastakis, D. (2001). Continental Auto Politics: the Failure of Opposition to the 1965 Auto Pact in Canada and the United States. *Michigan Historical Review*, 27(2), 131-156.
- Andreas, P. (2003). A Tale of Two Borders: the US-Canada and US-Mexico Lines After 9-11. In P. Andreas, and T. J. Biersteker (Eds.), *The Rebordering of North America: Integration and Exclusion in a New Security Context* (pp. 1-23). New York: Routledge.
- Antweiler, W. (2009). *Foreign Currency Units per 1 Canadian Dollar, 1948-2009*. Retrieved August 26, 2011, from Pacific Exchange Rate Service, Sauder School of Business, University of British Columbia: <http://fx.sauder.ubc.ca/etc/CADpages.pdf>
- Arroyo Picard, A. (2009, December). *EL TLCAN en México: Promesas, Mitos y Realidades*. Retrieved March 39, 2012, from Red Mexicana de Acción Contra el Libre Comercio: <http://www.rmalc.org.mx/documentos/libros/tlcan2009.pdf>
- ASEAN. (2014). *About ASEAN Secretariat*. Retrieved May 1, 2014, from Association of South East Asian Nations: <http://www.asean.org/asean/asean-secretariat/about-asean-secretariat>

- ASEAN. (2014). *Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA)*. Retrieved May 1, 2014, from Association of South East Asian Nations: <http://www.asean.org/communities/asean-economic-community/item/agreement-on-the-common-effective-preferential-tariff-cept-scheme-for-the-asean-free-trade-area-afta>
- ASEAN Secretariat. (2014). *ASEAN Economic Community*. Retrieved May 1, 2014, from ASEAN Secretariat: <http://www.asean.org/communities/asean-economic-community>
- Aspinwall, M. (2013). *Side Effects: Mexican Governance under NAFTA's Labor and Environmental Agreements*. Stanford: Stanford University Press.
- Aspinwall, M. D. (1995). International Integration or Internal Politics? Anatomy of a Single Market Measure. *Journal of Common Market Studies*, 33(4), 475-499.
- Aspinwall, M. D. (2009). NAFTA-ization: Regionalization and Domestic Political Adjustment in the North American Economic Area. *Journal of Common Market Studies*, 47(1), 1-24.
- Aspinwall, M. D. (2012, November). *The NAFTA Side Agreements and Governance in Mexico*. Retrieved April 8, 2013, from MarkAspinwall.com: <http://markaspinwall.com/wp-content/uploads/2012/11/The-NAFTA-side-agreements-and-governance-in-Mexico.pdf>
- Ayres, J. M. (2008). Civil Society Organizing Under Continental Integration: The Promise and Limits of Community-Building "From Below". In Y. Abu-Laban, R. Jhappan, and F. Rocher (Eds.), *Politics in North America: Redefining Continental Relations* (pp. 423-440). Peterborough: Broadview Press.
- Ayres, J. M., and MacDonald, L. (Eds.). (2012). *North America in Question: Regional Integration in an Era of Economic Turbulence*. Toronto: University of Toronto Press.
- Baer, W. (1972). Import Substitution and Industrialization in Latin America: Experiences and Interpretations. *Latin American Research Review*, 7(1), 95-122.
- Bahr, M., Hernández Juárez, F., and Bahena Lome, B. (1996, October 11). *The Case of Maxi-Swith Inc. in Cananea, Mexico*. Retrieved June 16, 2013, from Secretariat of the Commission for Labor Cooperation: <http://new.naalc.org/index.cfm?page=1070>
- BajaEco. (2011). *Comportamiento Anual, Tipo de Cambio*. Retrieved August 26, 2011, from BajaEco: [http://www.bajaeco.com/cuanto\\_tc.cfm](http://www.bajaeco.com/cuanto_tc.cfm)
- Baldwin, R. E. (1994, November). *A Domino Theory of Regionalism*. Retrieved Octubre 23, 2012, from Graduate Institute of International and Development Studies: [http://graduateinstitute.ch/webdav/site/ctei/shared/CTEI/Baldwin/Publications/Chapters/Regionalism/dom\\_old.pdf](http://graduateinstitute.ch/webdav/site/ctei/shared/CTEI/Baldwin/Publications/Chapters/Regionalism/dom_old.pdf)
- Baldwin, R. E., and Magee, C. S. (2000). *Trade Votes: From NAFTA Approval to Fast-Track Defeat*. Washington, D.C.: Institute for International Economics.
- Bangasser, P. E. (2000). *The ILO and the Informal Sector: An Institutional History*. Retrieved May 15, 2013, from International Labour Organization:

[http://www.ilo.int/wcmsp5/groups/public/@ed\\_emp/documents/publication/wcms\\_142295.pdf](http://www.ilo.int/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_142295.pdf)

- Barrett, C. A., and Williams, H. (2003, February). *Renewing the Relationship: Canada and the United States in the 21st Century*. Retrieved April 23, 2014, from The Conference Board of Canada: <http://www.conferenceboard.ca/e-library/abstract.aspx?did=512>
- BBC News. (2012, July 31). *Venezuela Joins Mercosur Trading Bloc*. Retrieved April 30, 2014, from BBC News: <http://www.bbc.co.uk/news/world-latin-america-19069591>
- BECC. (2009). *BECC and NADB: Successful Bi-National Cooperation*. Retrieved March 10, 2013, from Border Environment Cooperation Commission: <http://www.cocef.org/english/index.html>
- BECC/NADBank. (2010, June 15). *Public Meeting of the Board of Directors*. Retrieved April 14, 2013, from Border Environment Cooperation Commission: [http://www.cocef.org/Eng/VLibrary/Publications/PMBD\\_Transcripts/100615-PublicMeeting-Eng.pdf](http://www.cocef.org/Eng/VLibrary/Publications/PMBD_Transcripts/100615-PublicMeeting-Eng.pdf)
- Bélanger, L. (2010). Governing the North American Free Area: International Rule Making and Delegation in NAFTA, the SPP, and Beyond. *Latin American Policy*, 1(1), 22-51.
- Belausteguigoitia, J. C., and Guadarrama, L. F. (1997). United States-Mexico Relations: Environmental Issues. In B. P. Bosworth, S. M. Collins, and N. C. Lustig (Eds.), *Coming Together? Mexico-U.S. Relations* (pp. 91-117). Washington, D.C.: The Brookings Institution.
- Bennett, V., and Herzog, L. A. (2000). US-Mexico Borderland Water Conflicts and Institutional Change: A Commentary. *Natural Resources Journal*, 40(4), 973-988.
- Bensunsán Areous, G. I. (1994). Entre Candados y Dientes: La Agenda Laboral del TLCAN. *Perfiles Latinoamericanos*(4), 109-141.
- Bensunsán, G., and Middlebrook, K. J. (2012). *Organized Labour and Politics in Mexico*. Institute for the Study of the Americas: London.
- Bergmann, M. E. (Ed.). (2011). *North American Free Trade Agreement After Five Years*. Hauppauge: Nova Science Publishers.
- Besunsán Areous, G. I. (2007). *La Efectividad de la Legislación Laboral en América Latina*. Retrieved February 13, 2012, from Instituto Internacional de Estudios Laborales | Organización Internacional del Trabajo: <http://www.ilo.org/public/english/bureau/inst/publications/discussion/dp18107.pdf>
- Bettauer, R. J. (1999, November 9). *Metalclad Corporation v. The United Mexican States. Submission of the Government of the United States of America*. Retrieved July 14, 2013, from NAFTA Claims: <http://naftaclaims.com/Disputes/Mexico/Metalclad/MetalcladUS1128.pdf>
- Bierman, L., and Gely, R. (1995). The North American Agreement on Labor Cooperation: A New Frontier in North American Labor Relations. *Connecticut Journal of International Law*, 10(2), 533-569.

- Blomström, M., and Kokko, A. (1997). *Policy Research Working Paper 1750: Regional Integration and Foreign Direct Investment: A Conceptual Framework and Three Cases*. Retrieved September 3, 2012, from The World Bank, International Trade Division: <http://docserver.ingentaconnect.com.ezproxye.bham.ac.uk/deliver/connect/wb/18139450/v1n1/s1750.pdf?expires=1346708778&id=70294158&titleid=75003787&accname=University+of+Birmingham&checksum=4B9D542DF4FB17832C45C06D0996E513>
- Böckstiegel, K.-H. (2006, October 20). *Canadian Claimants v. United States of America: Procedural Order No.1*. Retrieved July 21, 2013, from US Department of State, Office of the Legal Adviser: <http://www.state.gov/documents/organization/75549.pdf>
- Böckstiegel, K.-H., Bacchus, J., and Low, L. A. (2008, January 28). *The Canadian Cattlemen for Fair Trade v. United States of America: Award on Jurisdiction*. Retrieved July 19, 2013, from NAFTA Claims: <http://www.naftaclaims.com/Disputes/USA/CCFT/CCFT-USA-Award.pdf>
- Bognanno, M. F., and Lu, J. (2003). NAFTA's Labor Side Agreement: Withering as an Effective Labor Law Enforcement and MNC Compliance Strategy. In W. N. Cooke (Ed.), *Multinational Companies and Global Human Resource Strategies* (pp. 369-401). Westport: Quorum Books.
- Bolle, M. J. (2001, October 12). *Congressional Research Service Report for Congress 97-861E: NAFTA Labor Side Agreement: Lessons for the Worker Rights and Fast-Track Debate*. Retrieved April 4, 2012, from Foreign Press Center, U.S. Department of State: <http://fpc.state.gov/documents/organization/62111.pdf>
- Botts, L., and Muldoon, P. (2008). Using the Boundary Waters Treaty for the 21st Century: Revitalizing the Great Lakes Governance Regime. *The Wayne Law Review*, 54(4), 1553-1570.
- Bradsher, K. (1993, October 27). *U.S. Says Chretien Will Not Undo NAFTA*. Retrieved April 4, 2014, from The New York Times: <http://www.nytimes.com/1993/10/27/world/us-says-chretien-will-not-undo-nafta.html>
- Branch, A. P., and Øhrgaard, J. C. (1999). Trapped in the Supranational-Intergovernmental Dichotomy: A Response to Stone Sweet and Sandholtz. *Journal of European Public Policy*, 6(1), 123-143.
- Bremer, L. J. (1999). Pregnancy Discrimination in Mexico's Maquiladora System: Mexico's Violation of Its Obligations under NAFTA and the NAALC. *NAFTA: Law and Business Review of the Americas*, 5(4), 567-588.
- Breslin, S., and Higgott, R. (2000). Studying Regions: Learning from the Old, Constructing the New. *New Political Economy*, 5(3), 333-352.
- Breslin, S., Hughes, C. W., Phillips, N., and Rosamond, B. (Eds.). (2002). *New Regionalisms in the Global Political Economy*. London: Routledge.

- Brimmer, E. (2010, May 4). *President's Committee on the International Labor Organization*. Retrieved April 3, 2013, from US Department of State: <http://www.state.gov/p/io/rm/2010/141482.htm>
- Bromley, S. (2001). What is the European Union? In S. Bromley (Ed.), *Governing the European Union* (pp. 287-303). London: Sage Publications.
- Brooks, D., and Fox, J. (2002). *Cross-Border Dialogues: US-Mexico Social Movement Networking*. San Diego: University of California.
- Brower, C. H. (2002). Investor-State Disputes Under NAFTA: A Tale of Fear and Equilibrium. *Pepperdine Law Review*, 43-85.
- Bugeda, B. (1998). Is NAFTA up to its Green Expectations? Effective Law Enforcement under the North American Agreement on Environmental Cooperation. *University of Richmond Law Review*, 32, 1591-1617.
- Burfisher, M. E., Robinson, S., and Thierfelder, K. (2001). The Impact of NAFTA on the United States. *Journal of Economic Perspectives*, 15(1), 125-144.
- Burnell, P., Rakner, L., and Randall, V. (2005). *Politics in the Developing World*. Oxford: Oxford University Press.
- Busch, M. L., and Reinhardt, E. (2000). Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Dispute. *Fordham International Law Journal*, 24(1-2), 158-172.
- Cámara de Diputados. (1993, December). Decreto que Reforma, Adiciona y Deroga Disposiciones de Diversas Leyes Relacionadas con el Tratado de Libre Comercio de América del Norte. *Diario Oficial de la Federación*, CDLXXXIII(16), 41-46.
- Cámara de Diputados. (2003, April). *Encadenamiento de Series Históricas del Producto Interno Bruto de México*. Retrieved August 26, 2011, from Cámara de Diputados, Centro de Estudios de las Finanzas Públicas: <http://www.cefp.gob.mx/intr/edocumentos/pdf/cefp/cefp0122003.pdf>
- Cameron, M. A. (1991). North American Free Trade, Public Goods, and Assymetrical Bargaining: The Strategic Choices for Canada. *Frontera Norte*, 3(6), 47-64.
- Cameron, M. A., and Tomlin, B. W. (2000). *The Making of NAFTA: How the Deal Was Done*. Ithaca: Cornell University Press.
- Canadian Foundation for Labour Rights. (2012). *Canada's Record at the ILO*. Retrieved February 13, 2012, from Canadian Foundation for Labour Rights: <http://www.labourrights.ca/issues/fact3-canadas-record-ilo>
- Candland, C. (2009). Core Labour Standards under the Administration of George W. Bush. *International Labour Review*, 148(1-2), 169-181.
- Capling, A., and Nossal, K. R. (2009). The Contradictions of Regionalism in North America. *Review of International Studies*, 35(S1), 147-167.

- Caporaso, J. A. (1998). Regional Integration Theory: Understanding Our Past and Anticipating Our Future. In W. Sandholtz, and A. Stone Sweet (Eds.), *European Integration and Supranational Governance* (pp. 334-351). Oxford: Oxford University Press.
- Caporaso, J. A., and Keeler, J. T. (1993, May 27-29). *The European Community and Regional Integration Theory*. Retrieved September 18, 2011, from Proceedings of the Third Biennial International Conference of the European Community Studies Association: [http://aei.pitt.edu/7252/1/002711\\_1.PDF](http://aei.pitt.edu/7252/1/002711_1.PDF)
- Caporaso, J. A., Marks, G., Moravcsik, A., and Pollack, M. A. (1997). Does the European Union Represent an n of 1? *ECSA Review*, 10(3), 1-5.
- Cardarelli, R., and Kose, M. A. (2004, August). *Economic Integration, Business Cycle, and Productivity in North America*. Retrieved July 16, 2012, from International Monetary Fund: <http://www.imf.org/external/pubs/ft/wp/2004/wp04138.pdf>
- Carmona Lara, M. (1993). El Tratado de Libre Comercio y el Ambiente (Acuerdos Paralelos). In J. A. Witker Velásquez (Ed.), *El Tratado de Libre Comercio de América del Norte: Análisis, Diagnóstico y Propuestas Jurídicas* (pp. 291-341). México, DF: Universidad Nacional Autónoma de México.
- Carpentier, C. L. (2009). *IRPP Working Paper Series no. 2004-09f: Mapping the New North American Reality: Trade and Environment in North America*. Retrieved April 3, 2013, from Institute for Research on Public Policy: [http://www.irpp.org/wp/archive/NA\\_integ/wp2004-09f.pdf](http://www.irpp.org/wp/archive/NA_integ/wp2004-09f.pdf)
- Carroll, J. E., and Mack, N. B. (1982). On Living Together in North America: Canada, the United States and International Environmental Relations. *Denver Journal of International Law and Policy*, 12(1), 35-50.
- Carter, N., and Ortolano, L. (2000). Working Toward Sustainable Water and Wastewater Infrastructure in the US-Mexico Border Region: A Perspective on BECC and NADBank. *International Journal of Water Resources Development*, 16(4), 691-708.
- Castañeda Gutman, J. G., and Heredia, C. (1992). Another NAFTA: What a Good Agreement Should Offer. *World Policy Journal*, 9(4), 673-685.
- Castro Rea, J. (2012). *Our North America: Social and Political Issues Beyond NAFTA*. Farnham: Ashgate.
- Caulfield, N. (2010). *NAFTA and Labor in North America*. Urbana: University of Illinois Press.
- Cavazos Villanueva, G., and Martínez Serna, L. F. (2002, June 26-28). *Private Parties in the NAFTA Dispute Settlement Mechanisms: The Mexican Experience*. Retrieved August 1, 2013, from Tecnológico de Monterrey: EGADE Business School: [http://web4.mty.itesm.mx/temporal/egade/investigacion/documentos/documentos/22egade\\_gabriel.pdf](http://web4.mty.itesm.mx/temporal/egade/investigacion/documentos/documentos/22egade_gabriel.pdf)
- CCPA. (2007, March 1). *NAFTA Chapter 11 Investor-State Disputes*. Retrieved July 19, 2013, from Canadian Centre for Policy Alternatives: [http://www.policyalternatives.ca/sites/default/files/uploads/publications/National\\_Office\\_Pubs/2007/NAFTA\\_Dispute\\_Table\\_March2007.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2007/NAFTA_Dispute_Table_March2007.pdf)

- CEC. (1998, January 1). *Annual Report 1996*. Retrieved April 3, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Storage/93/9085\\_ar96\\_en.pdf](http://www.cec.org/Storage/93/9085_ar96_en.pdf)
- CEC. (2000, June). *Internal Review of the North American Fund for Environmental Cooperation (NAFEC)*. Retrieved April 2, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Storage/52/4456\\_nafec2000eval\\_en.pdf](http://www.cec.org/Storage/52/4456_nafec2000eval_en.pdf)
- CEC. (2013). *About the CEC*. Retrieved March 10, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Page.asp?PageID=1226andSiteNodeID=310andBL\\_ExpandID=154](http://www.cec.org/Page.asp?PageID=1226andSiteNodeID=310andBL_ExpandID=154)
- CEC. (2013). *Submissions by Year*. Retrieved October 31, 2013, from <http://www.cec.org/Page.asp?PageID=749andSiteNodeID=541>
- CEC. (2013). *Submissions on Enforcement Matters*. Retrieved March 12, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Page.asp?PageID=1212andSiteNodeID=210andBL\\_ExpandID=156](http://www.cec.org/Page.asp?PageID=1212andSiteNodeID=210andBL_ExpandID=156)
- CEC Secretariat. (1996). *Final Factual Record "Cruise Ship Pier Project in Cozumel, Quintana Roo"*. Retrieved March 12, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Storage/66/5989\\_ACF17D1.PDF](http://www.cec.org/Storage/66/5989_ACF17D1.PDF)
- CEC Secretariat. (1996). *Recommendation of the Secretariat to the Council for the Development of a Factual Record in accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation*. Retrieved March 18, 2013, from Commission on Environmental Cooperation: Recommendation of the Secretariat to Council for the
- Chanona Burguete, A. (2003). A Comparative Perspective between the European Union and NAFTA. *Jean Monnet/Robert Schuman Paper Series*, 3(5), 1-12.
- Chase, K. A. (2003). Economic Interests and Regional Trading Arrangements: The Case of NAFTA. *International Organization*, 57(1), 137-174.
- Che, J., and Willmann, G. (2009). *CESifo Working Paper No. 2562: The Economics of a Multilateral Investment Agreement*. Munich: Center for Economic Studies (CESifo).
- Chomsky, N. (1993). *Notes on NAFTA: The Masters of Mankind*. Retrieved May 11, 2013, from Sincronía: Revista de Filosofía y Letras: <http://fuentes.csh.udg.mx/CUCSH/Sincronia/chomnaft.html>
- Chrétien, J. (2012, February 15). The Honorable Jean Chrétien - State of the World Address. Forth Worth, TX: The World Affairs Council of Dallas/Forth Worth.
- Clarkson, S. (2008). *Does North America Exist? Governing the Continent After NAFTA and 9/11*. Toronto: University of Toronto Press.
- Clarkson, S. (2009). *Continentalism from Below: Variations in Tri-National Mobilization among Labour Unions, Environmental Organizations, and Indigenous Peoples*. Retrieved March 12, 2013, from Computing in the Humanities and Social Sciences, University of Toronto: <http://homes.chass.utoronto.ca/~clarkson/publications/Continentalism%20from%20Bel>



ow%20Variations%20in%20Tri-National%20Mobilization%20among%20Labour%20Unions,%20Environmental%20Organizations,%20and%20Indigenous%20Peoples-draft.pdf

- Clarkson, S., Ladly, S. D., Merwart, M., and Thorne, C. (2005). The Primitive Realities of North America's Transnational Governance. In E. Grande, and L. Pauly (Eds.), *Complex Sovereignty: Reconstituting Political Authority in the Twenty-First Century* (pp. 168-195). Toronto: Toronto University Press.
- Clausing, K. A. (2001). Trade Creation and Trade Diversion in the Canada-United States Free Trade Agreement. *Canadian Journal of Economics*, 34(3), 677-696.
- CLC. (2010). *Summary of Activity Related to Public Communications*. Retrieved October 31, 2013, from [http://www.naalc.org/public\\_communications/summary\\_of\\_activity.htm](http://www.naalc.org/public_communications/summary_of_activity.htm)
- CLC's Council. (2010, August 20). *Statement of the Council on the Secretariat of the Commission for Labor Cooperation of the North American Agreement on Labor Cooperation*. Retrieved June 26, 2013, from Secretariat of the Commission for Labor Cooperation: <http://www.naalc.org/index.cfm?page=751andartcat=4andarticle=56>
- CLC's Secretariat. (1997, September 18). *Part Two: Highlights of the Consultation Process*. Retrieved May 29, 2012, from Review of the North American Agreement on Labor Cooperation 1994-1997: <http://new.naalc.org/index.cfm?page=232#Publiccomments>
- CLC's Secretariat. (2009). *NAALC Public Communications and Results, 1994-2008*. Retrieved June 25, 2013, from Commission for Labor Cooperation: <http://www.naalc.org/userfiles/file/NAALC-Public-Communications-and-Results-1994-2008.pdf>
- CLC's Secretariat. (2012). *Process and Timeframe*. Retrieved November 18, 2013, from Commission for Labor Cooperation: [http://www.naalc.org/UserFiles/Image/Public\\_communications\\_processing\\_3.JPG](http://www.naalc.org/UserFiles/Image/Public_communications_processing_3.JPG)
- CLC's Secretariat. (2014). *Part Three: Commission for Labor Cooperation*. Retrieved April 7, 2014, from Secretariat of the Commission for Labor Cooperation: <http://new.naalc.org/index.cfm?page=214>
- Clement, N. C., Del Castillo Vera, G., and Gerber, J. (2000). *North American Economic Integration: Theory and Practice*. Cheltenham: Edward Elgar Publishing.
- Clinton, B. (1993, December 8). President Clinton Remarks on the Signing of the North American Free Trade Agreement. Charlottesville, VA: Miller Center of Public Affairs, University of Virginia.
- Clodfelter, M. A., Menaker, A. J., and Benes, K. J. (2006, December 1). *Canadian Claimants v. United States of America: Memorial on the Preliminary Issue*. Retrieved July 21, 2013, from US Department of State, Office of the Legal Adviser: <http://www.state.gov/documents/organization/77483.pdf>
- Committee on Foreign Relations. (2008, September 9). *Argentina: Rudderless, Report to the Members of the Committee on Foreign Relations, United States Senate*. Retrieved April

25, 2014, from Federation of American Scientists:  
<http://www.fas.org/irp/world/argentina/rudderless.pdf>

- Compa, L. A. (1995). The First NAFTA Labor Cases: A New International Labor Rights Regime Takes Shape. *United States-Mexico Law Journal*, 3(159), 159-181.
- Compa, L. A. (1997a). Another Look at NAFTA. *Dissent*, 44(1), 45-50.
- Compa, L. A. (1997b). Comparing the NAALC and the European Union Social Charter (Transcript). *American University Journal of International Law and Policy*, 12(5), 837-841.
- Compa, L. A. (1997c). NAFTA's Labor Side Accord: A Three-Year Accounting. *NAFTA: Law and Business Review of the Americas*, 3(3), 6-23.
- Compa, L. A. (1999, January 1). *Is There an Emerging Transnational Regime for Labor Standards? Remarks*. Retrieved February 11, 2012, from Proceedings of the American Society of International Law:  
<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1335andcontext=articles>
- Compa, L. A. (2001). NAFTA's Labor Side Agreement and International Labor Solidarity. *Antipode: A Radical Journal of Geography*, 33(3), 451-467.
- Congressional Research Service. (2010). *NAFTA and the Mexican Economy*. Washington, D.C.: Congressional Research Service.
- Cook, M. E. (1994). Regional Integration and Transnational Labor Strategies under NAFTA. In M. E. Cook, and H. C. Katz (Eds.), *Regional Integration and Industrial Relations in North America* (pp. 142-157). Ithaca: Cornell University Press.
- Cooke, W. N. (2003). *Multinational Companies and Global Human Resource Strategies*. Westport: Quorum Books.
- Courchene, T. J. (2003). FTA at 15, NAFTA at 10: a Canadian Perspective on North American Integration. *North American Journal of Economics and Finance*, 14(2), 263-285.
- Cowie, J. (1997, January 1). *National Struggles in a Transnational Economy: A Critical Analysis of US Labor's Campaign Against NAFTA*. Retrieved April 5, 2012, from Faculty Publications - Collective Bargaining, Labor Law, and Labor History: Faculty Publications - Collective Bargaining, Labor Law, and Labor History
- Cram, L. (1996). Integration Theory and the Study of the European Policy Process. In J. J. Richardson (Ed.), *European Union: Power and Policy-Making* (pp. 40-58). London: Routledge.
- Cram, L. (2001). Integration and Policy Processes in the European Union. In S. Bromley (Ed.), *Governing the European Union* (pp. 143-164). London: Sage Publications.
- Crandall, E. C. (1994). Will NAFTA's North American on Labor Cooperation Improve Enforcement of Mexican Labor Laws? *The Transnational Lawyer*, 7(1), 165-195.

- CUSFTA. (2012). *Canada - United States Free Trade Agreement*. Retrieved August 28, 2012, from World Trade Law: <http://www.worldtradelaw.net.ezproxye.bham.ac.uk/nafta/CUSFTA.pdf>
- D'Aquino, T. (2003, January 14). *Security and Prosperity: The Dynamics of a New Canada-United States Partnership in North America*. Retrieved April 23, 2014, from thomasdaquino.ca: [http://thomasdaquino.ca/assets/presentations\\_2003\\_01\\_14.pdf](http://thomasdaquino.ca/assets/presentations_2003_01_14.pdf)
- De La Garza Toledo, E. (1994). *Mexican Labour Unions Facing the Free Trade Agreement (NAFTA)*. Retrieved April 3, 2012, from Universidad Autónoma Metropolitana, Unidad Iztapalapa: <http://docencia.izt.uam.mx/egt/publicaciones/articulos/Mexican%20Labor%20Unions%20Facing%20the%20Free%20Trade%20Agreement.pdf>
- De Lombaerde, P., Söderbaum, F., Van Langenhove, L., and Baert, F. (2010a). Problems and Divides in Comparative Regionalism. In F. Laursen (Ed.), *Comparative Regional Integration: Europe and Beyond* (pp. 21-40). Farnham: Ashgate.
- De Lombaerde, P., Söderbaum, F., Van Langenhove, L., and Baert, F. (2010b). The Problem of Comparison in Comparative Regionalism. *Review of International Studies*, 36(3), 731-753.
- De Onis, J. (2013, November 3). *Argentina's New Opportunity for Reform*. Retrieved April 30, 2014, from World Affairs: <http://www.worldaffairsjournal.org/blog/juan-de-onis/argentinas-new-opportunity-reform>
- Della Sala, V. (2008). Birth of a Union: Lessons for North America from the European Union. In Y. Abu-Laban, R. Jhappan, and F. Rocher (Eds.), *Politics in North America: Redefining Continental Relations* (pp. 115-131). Peterborough: Broadview.
- Delp, L., Arriaga, M., Palma, G., Urita, H., and Valenzuela, A. (2004). *NAFTA's Labour Side Agreement: Fading into Oblivion? An Assessment of Workplace Health and Safety Cases*. Los Angeles: UCLA Center for Labor Research and Education.
- DePalma, A. (2001, October 19). *NAFTA Dispute Is in Court Once Again*. Retrieved June 28, 2012, from The New York Times: <http://www.nytimes.com/2001/10/19/business/nafta-dispute-is-in-court-once-again.html>
- Deutsch, K. W. (1978). *The Analysis of International Relations*. Englewood Cliffs: Prentice-Hall.
- DFAIT. (2012, May 2). *NAFTA - Chapter 11 - Investment: Summary of NAFTA Chapter 11's Provisions*. Retrieved June 26, 2012, from Foreign Affairs and International Trade Canada: Trade Negotiations and Agreements: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/gen-nafta.aspx?view=d>
- DFATD. (2012, February 29). *Canada-United States Free Trade Agreement (FTA)*. Retrieved September 28, 2012, from Department of Foreign Affairs, Trade and Development: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fast-facts-US.aspx?lang=enandview=d>

- DFATD. (2013, April 4). *Municipalities and NAFTA Chapter 11*. Retrieved July 14, 2013, from Department of Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/Mun-FAQs.aspx?lang=eng>
- DFATD. (2013, May 24). *The North American Free Trade Agreement (NAFTA) - Chapter 11 - Investment*. Retrieved July 31, 2013, from Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/nafta.aspx>
- Diez, T., and Wiener, A. (2009). Introducing the Mosaic of Integration Theory. In A. Wiener, and T. Diez (Eds.), *European Integration Theory* (pp. 1-22). Oxford: Oxford University Press.
- Dobson, W. (2002, April). *The Border Papers: Shaping the Future of the North American Space: A Framework for Action*. Retrieved April 23, 2014, from C.D. Howe Institute: [http://www.cdhowe.org/pdf/commentary\\_162.pdf](http://www.cdhowe.org/pdf/commentary_162.pdf)
- Dodge, W. S. (2013, February 20). *Local Remedies Under NAFTA Chapter 11*. Retrieved July 20, 2013, from University of California Hastings College of the Law Working Paper Series: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2217059](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217059)
- Dombois, R. (2002). The North American Agreement on Labor Cooperation: Designed to Fail. *Perspectives on Work*, 6(1), 19-21.
- Dombois, R., Hornberger, E., and Winter, J. (2003). Transnational Labor Regulation in the NAFTA – A Problem of Institutional Design? The Case of the North American Agreement on Labor Cooperation between the USA, Mexico and Canada. *Proceedings of the 13th World Congress of the International Industrial Relations Association*, (pp. 1-23). Berlin.
- Domínguez Rivera, R. (2007, April). NAFTA: Will it ever have an EU profile? *Jean Monnet/Robert Schuman Paper Series*, 7(3), 1-14.
- Dossier Político. (2012). *Tira México Dinero en OIT*. Retrieved March 21, 2012, from DossierPolitico.com: <http://www.dossierpolitico.com/vernoticiasanteriores.php?artid=22430andrelacion=dossierpolitico>
- Down, I. (2008). Book Review: Niemann, A. (2006). Explaining Decisions in the European Union. *Comparative Political Studies*, 41(2), 246-249.
- Dumberry, P. (2001). The NAFTA Investment Dispute Settlement Mechanism: A Review of the Latest Case Law. *Journal of World Investment*, 151-195.
- Easterly, W., Fiess, N. M., and Lederman, D. (2003). NAFTA and Convergence in North America: High Expectations, Big Events, Little Time. *Economía*, 4(1), 1-53.
- Eilstrup-Sangiovanni, M. (Ed.). (2006). *Debates on European Integration: A Reader*. Basingstoke: Palgrave Macmillan.

- El País. (2014, April 12). *Mercosur acordó la oferta conjunta que hará a la Unión Europea*. Retrieved April 30, 2014, from El País: <http://www.elpais.com.uy/economia/noticias/mercosur-acordo-oferta-que-hara.html>
- Elliott, K. A., and Freeman, R. B. (2003). The ILO to the Rescue? In *Can Labor Standards Improve Under Globalization?* (pp. 93-109). Washington, D.C.: Institute for International Economics.
- Environment Canada. (2007, April 18). *Evaluation of Canada's Participation in the Commission for Environmental Cooperation (CEC)*. Retrieved March 5, 2013, from Environment Canada: [www.ec.gc.ca/doc/ae-ve/CEC-CCE/CEC\\_CCE\\_Eval\\_E.doc](http://www.ec.gc.ca/doc/ae-ve/CEC-CCE/CEC_CCE_Eval_E.doc)
- Escobar, A. A. (1999, July 28). *Metalclad Corporation v. United Mexican States. Submission of the Government of Canada*. Retrieved July 14, 2013, from NAFTA Claims: <http://naftaclaims.com/Disputes/Mexico/Metalclad/MetalcladCanada1128.pdf>
- Escobar, A. A. (2000). *Cases: Introductory Note*. Retrieved July 14, 2013, from International Centre for Settlement of Investment Disputes: <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRHandactionVal=s&howDocanddocId=DC541andcaseId=C155>
- Eurostat. (1996). *European System of Accounts (ESA 1995)*. Retrieved August 27, 2011, from European Commission, Eurostat: <http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/en/een00000.htm>
- Eurostat. (2011, March 10). *Long GDP Series for Historic EU Totals*. Retrieved August 27, 2011, from European Commission: Eurostat: [http://epp.eurostat.ec.europa.eu/portal/page/portal/national\\_accounts/introduction](http://epp.eurostat.ec.europa.eu/portal/page/portal/national_accounts/introduction)
- Farber, T., and Martin, T.-A. (2012). Adams Mine: The Final Chapter – \$355 Million Claim Dismissed. *Environews*, 22(1), 1-4.
- Faynblyum, Y. (2013). *The Metalclad Appeal: A Pyrrhic Victory?* Retrieved July 16, 2013, from The Canadian Bar Association: <http://www.cba.org/cba/newsletters/environmental-06-2001/eco3.aspx>
- Fernández Armesto, J., Castel, J. G., and Lévy, L. (2011, September 15). *Vito G. Gallo v. Canada: Award*. Retrieved July 24, 2013, from Department of Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/disp-diff/gallo-11.pdf>
- Finbow, R. G. (2006). *The Limits of Regionalism: NAFTA's Labor Accord*. Aldershot: Ashgate.
- Fink, S., and Krapohl, S. (2010). *Assessing the Impact of Regional Integration: Do Regional Trade Institutions Shape Trade Patterns?* Retrieved October 23, 2012, from Political Science Association: [http://www.psa.ac.uk/journals/pdf/5/2010/264\\_618.pdf](http://www.psa.ac.uk/journals/pdf/5/2010/264_618.pdf)
- Fischhendler, I. (2005). *Escaping the 'Polluter Pays' Trap: Financing Wastewater Treatment on the Tijuana-San Diego Border*. Retrieved November 1, 2010, from Free University Amsterdam: [http://www.feweb.vu.nl/ersa2005/final\\_papers/26.pdf](http://www.feweb.vu.nl/ersa2005/final_papers/26.pdf)

- Flaherty, B., Pacheco Vega, R., and Isaac-Renton, J. (2011). Moving Forward in Canada–United States Transboundary Water Management: an Analysis of Historical and Emerging Concerns. *Water International*, 36(7), 924–936.
- Fligstein, N., and Stone Sweet, A. (2001). Institutionalizing the Treaty of Rome. In A. Stone Sweet, W. Sandholtz, and N. Fligstein (Eds.), *The Institutionalization of Europe* (pp. 29-55). Oxford University Press.
- Fligstein, N., and Stone Sweet, A. (2002, March). Constructing Politics and Markets: An Institutional Account of European Integration. *American Journal of Sociology*, 107(5), 1206-1243.
- Flyvbjerg, B. (2006). Five Misunderstandings About Case-Study Research. *Qualitative Inquiry*, 12(2), 219-242.
- Forster, A. (1999). The State of the Art: Mapping the Theoretical Landscape of European Integration. *Journal of International Relations and Development*, 2(1), 1-15.
- Foster, J. W. (2005). The Trilateral Alliance against NAFTA: Sinews of Solidarity. In J. Bandy, and J. Smith (Eds.), *Coalitions Across Borders: Transnational Protest and the Neoliberal Order: People, Passions and Power*. Oxford: Rowman and Littlefield Publishers.
- Fox, J., Coffey, B., Mintert, J., Schroeder, T., and Valentin, L. (2005). The Response to BSE in the United States. *Choices*, 20(2), 103-107.
- Freeman, N. (2009, December). *The International Investor Rights Regime: Domestic Sources of Commitment and Compliance*. Retrieved September 15, 2012, from University of Georgia:  
[http://athenaeum.libs.uga.edu/bitstream/handle/10724/11774/freeman\\_nathan\\_w\\_200912\\_phd.pdf?sequence=1](http://athenaeum.libs.uga.edu/bitstream/handle/10724/11774/freeman_nathan_w_200912_phd.pdf?sequence=1)
- Frente Auténtico del Trabajo. (2006, October 17). *Public Communication to the NAO of Mexico*. Retrieved June 21, 2013, from Bloomberg BNA:  
[http://www.google.com/url?sa=t&drct=jandq=andesrc=sandsource=webanded=2andved=0CFwQFjABandurl=http://op.bna.com/gr.nsf/r%3FOpen%3Dlfrs-6unl9randei=SpHXT\\_HgN8rC2QXJvODcCAandusg=AFQjCNFAXR2Zv6oESfSFW17TLsaIfnN94wandsig2=LgxW1lrEwdJ4SuMTj49tTg](http://www.google.com/url?sa=t&drct=jandq=andesrc=sandsource=webanded=2andved=0CFwQFjABandurl=http://op.bna.com/gr.nsf/r%3FOpen%3Dlfrs-6unl9randei=SpHXT_HgN8rC2QXJvODcCAandusg=AFQjCNFAXR2Zv6oESfSFW17TLsaIfnN94wandsig2=LgxW1lrEwdJ4SuMTj49tTg)
- Frieden, J., and Martin, L. L. (2001, April 9). *International Political Economy: The State of the Sub-Discipline*. Retrieved October 28, 2012, from Georgetown University, Mortara Center for International Studies:  
<http://www9.georgetown.edu/faculty/jrv24/frieden%26martin2002.pdf>
- Friesen, J. (2004, October 4). *Cattle Farmers across Canada Fight for Survival amid BSE Fallout Ontarians Join Group of Albertans using NAFTA to Sue U.S. Government*. Retrieved July 19, 2013, from The Globe and Mail:  
<http://www.theglobeandmail.com/incoming/cattle-farmers-across-canada-fight-for-survival-amid-bse-fallout-ontarians-join-group-of-albertans-using-nafta-to-sue-us-government/article1141701/>

- Fukao, K., Toshihiro, O., and Stern, R. M. (2002). *Discussion Paper No. 431: An Econometric Analysis of Trade Diversion Under NAFTA*. Tokyo: Institute of Economic Research, Hitotsubashi University.
- Gallo, V. G., and Swanick, B. (2007, March 29). *Vito G. Gallo v. Canada: Notice of Arbitration*. Retrieved July 25, 2013, from Department of Foreign Affairs, Trade and Development: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/disp-diff/gallo-02.pdf>
- Gantz, D. A. (1996). The North American Development Bank and the Border Environment Cooperation Commission: A New Approach to Pollution Abatement along the United States-Mexican Border. *Law and Policy in International Business*, 27(4), 1027-1056.
- Gantz, D. A. (1999). Dispute Settlement Under the NAFTA and the WTO: Choice of Forum Opportunities and Risks for the NAFTA Parties. *American University International Law Review*, 14(4), 1025-1106.
- Gardner, A. (2014, February 27). *Rousseff Expresses Strong Will to Complete EU-Mercosur Trade Deal*. Retrieved April 30, 2014, from European Voice: <http://www.europeanvoice.com/article/imported/rousseff-expresses-strong-will-to-complete-eu-mercosur-trade-deal/79832.aspx>
- Gastle, C. M., Martyn, M. R., Grierson-Weiler, T., and Leach, M. (2011, April 8). *Vito G. Gallo v. Canada: Claimant's Post-Hearing Brief*. Retrieved July 28, 2013, from Department of Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/disp-diff/gallo-09.pdf>
- Genna, G. M. (2011). Does North America Have the Right Stuff? An Analysis of Compatibility and the Potential Deepening of North American Integration. *Politics and Policy*, 39(1), 141-165.
- Genna, G. M., and Mayer-Foulkes, D. A. (2013). *North American Integration: An Institutional Void on Migration, Security and Development*. New York: Routledge.
- George, A. L., and Bennett, A. (2004). *Case Studies and Theory Development in the Social Sciences*. Cambridge: Harvard University.
- Ghazalian, P. L., and Furtan, W. H. (2009). CUSFTA Effects: A Joint Consideration of Trade and Multinational Activities. *The Journal of International Trade and Economic Development*, 18(4), 487-504.
- Gilbert, E. (2007). Leaky Borders and Solid Citizens: Governing Security, Prosperity and Quality of Life in a North American Partnership. *Antipode*, 39(1), 77-98.
- Gitterman, D. P. (2003). European Integration and Labour Market Cooperation: a Comparative Regional Perspective. *Journal of European Social Policy*, 13(2), 99-120.
- Globerman, S., and Shapiro, D. (2003). Assessing Recent Patterns of Foreign Direct Investment in Canada and the United States. In R. G. Harris (Ed.), *North American Linkages: Opportunities and Challenges for Canada* (pp. 279-308). Calgary: University of Calgary Press.

- Globerman, S., and Walker, M. (1993). *Assessing NAFTA: A Trinational Analysis*. Vancouver: The Fraser Institute.
- Glumac, A. (1997, November 24). *Governmental Advisory Committee to the US Representative to the North American Environmental Cooperation Commission*. Retrieved April 8, 2013, from US Environmental Protection Agency: <http://www.epa.gov/ofacmo/gac/pdf/report1097.pdf>
- GMM. (2014). *Comparativo de Series de Varios Países - Periodo: 4º Trim. 1991 a 4º Trim. 2011*. Retrieved April 30, 2014, from Grupo de Monitoreo Macroeconómico: <https://www.gmm-mercosur.org/?x=3X4QguZUqOYzhJvge89fpw>
- GNEB. (2010, June). *A Blueprint for Action on the US-Mexico Border: Thirteenth Report of the Good Neighbor Environmental Board to the President and Congress of the United States*. Retrieved February 28, 2013, from US Environmental Protection Agency: <http://www.epa.gov/ofacmo/gneb/gneb13threport/English-GNEB-13th-Report.pdf>
- Gotlieb, A. (2013, March 29). *The United States in Canadian Foreign Policy*. Retrieved August 8, 2013, from Department of Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/odskelton/gotlieb.aspx>
- Government of Alberta. (2005). *Alberta Agriculture Statistics Yearbook: Population of Canada and Provinces on July 1, 1990-2005*. Retrieved August 27, 2011, from Ministry Agriculture and Rural Development: [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/sdd10287/\\$FILE/table10and11.pdf](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/sdd10287/$FILE/table10and11.pdf)
- Government of Canada. (2012, August 17). *Canada-Mexico Relations: A Strategic Partner for Canada*. Retrieved September 29, 2012, from Canadian Embassy, Mexico City, Mexico: [http://www.canadainternational.gc.ca/mexico-mexique/canmex.aspx?lang=eng&menu\\_id=12&view=d](http://www.canadainternational.gc.ca/mexico-mexique/canmex.aspx?lang=eng&menu_id=12&view=d)
- Government of Canada. (2013, May 13). *North American Free Trade Agreement Implementation Act*. Retrieved May 22, 2013, from Justice Laws Website: <http://laws-lois.justice.gc.ca/eng/acts/N-23.8/>
- Government of Canada. (2014, January 30). *Public Communications under the North American Agreement on Labour Cooperation*. Retrieved April 4, 2014, from International Labour Cooperation Agreements, Labour Program: [http://www.labour.gc.ca/eng/relations/international/agreements/naalc\\_pub\\_comm.shtml](http://www.labour.gc.ca/eng/relations/international/agreements/naalc_pub_comm.shtml)
- Graham, E. M. (1996). Direct Investment and the Future Agenda of the World Trade Organization. In J. J. Schott (Ed.), *The World Trading System: Challenges Ahead* (pp. 206-217). Washington, D.C.: Peterson Institute for International Economics.
- Grandbois, M., and Bouchard, M.-C. A. (2011). Public Participation in Transnational Law: Access to Justice in Environmental Matters in North American Treaties. *Macquarie Journal of International and Comparative Environmental Law*, 7(1), 1-21.



- Graubart, J. (2008). *Legalizing Transnational Activism: The Struggle to Gain Social Change from NAFTA's Citizen Petitions*. University Park: The Pennsylvania State University Press.
- Gray, J. (2011, October 11). *Canada Wins NAFTA Dispute over Ontario Mine Dump*. Retrieved July 24, 2013, from The Globe and Mail: <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/canada-wins-nafta-dispute-over-ontario-mine-dump/article557883/>
- Grierson-Weiler, T. (2008). *Commission Statements*. Retrieved July 11, 2013, from NAFTA Claims: <http://www.naftalaw.org/commission.htm>
- Griffin, M. J. (1997). North American Agreement on Labor Cooperation: A Flawed Attempt at Promoting Continental Labor Standards. *Suffolk Transnational Law Review*, 21, 113-142.
- Grimm, N. L. (1999). The North American Agreement of Labor Cooperation and its Effects on Women Working in Mexican Maquiladoras. *American University Law Review*, 48(1), 180-227.
- Gross, J. A. (1999). National Employee Rights Institute and Chicago-Kent College of Law. *Employee Rights and Employment Policy Journal*, 65.
- Gross, J. A. (2010). *A Shameful Business: The Case for Human Rights in the American Workplace*. Ithaca: Cornell University Press.
- Grunwald, J. (1983). Restructuring Industry Offshore: The US-Mexico Connection. *The Brookings Review*, 1(3), 24-27.
- Haas, E. B. (1961). International Integration: The European and the Universal Process. *International Organization*, 15(3), 366-339.
- Haas, E. B. (1970). The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing. *International Organization*, 24(4), 607-646.
- Haas, E. B. (1975). *The Obsolescence of Regional Integration Theory*. Berkeley: Institute of International Studies, University of California .
- Haas, E. B. (1976). Turbulent Fields and the Theory of Regional Integration. *International Organization*, 30(2), 173-212.
- Haas, E. B., and Schmitter, P. C. (1964). Economics and Differential Patterns of Political Integration: Projections About Unity in Latin America. *International Organization*, 18(4), 705-737.
- Hall, N. D. (2009). Introduction: Canada-United States Transboundary Environmental Protection. *Windsor Review of Legal and Social Issues*, 26, 1-6.
- Hamnett, B. R. (2006 ). *A Concise History of Mexico*. Cambridge: Cambridge University Press.

- Harris, R. G. (2000, November). *North American Economic Integration: Issues and a Research Agenda*. Retrieved March 26, 2010, from Simon Fraser University: <http://www.sfu.ca/~rharris/NAIntegration.pdf>
- Hart, M., Dymond, B., and Robertson, C. (1994). *Decision at Midnight: Inside the Canada-U.S. Free Trade Negotiations*. Vancouver: University of British Columbia Press.
- Haynal, G. (2004). *IRPP Working Paper Series 2004-09b. Mapping the New North American Reality: The Next Plateau in North America: What's the Big Idea?* Montreal: Institute for Research on Public Policy.
- Health Canada. (2013, September 10). *Second North America Consumer Product Safety Summit - Joint Statement*. Retrieved November 17, 2013, from <http://www.hc-sc.gc.ca/cps-spc/advisories-avis/info-ind/najs-nadc-eng.php>
- Hellman, J. A. (1993). Mexican Perceptions of Free Trade: Support and Opposition to NAFTA. In R. Grispun, and M. A. Cameron, *The Political Economy of North American Free Trade* (pp. 193-206). New York: St. Martin's Press.
- Herman, L. (2011, June 28). *NAFTA Investment Disputes: Where Are We?* Retrieved July 30, 2013, from Cassels Brock Lawyers: [http://www.casselsbrock.com/CBNewsletter/NAFTA\\_Investment\\_Disputes\\_\\_\\_Where\\_Are\\_We\\_](http://www.casselsbrock.com/CBNewsletter/NAFTA_Investment_Disputes___Where_Are_We_)
- Herzstein, R. E. (1995). *The Labor Cooperation Agreement among Mexico, Canada and the United States: Its Negotiation and Prospects*. Retrieved February 8, 2012, from National Law Centre for Inter-American Free Trade, University of Arizona: <http://www.natlaw.com/pubs/usmxlaw/usmjnm10.htm>
- Hettne, B. (2005). Beyond the 'New' Regionalism. *New Political Economy*, 10(4), 543-571.
- Hinojosa Ojeda, R. A., Lewis, J. D., and Robinson, S. (1995). Regional Integration Options for Central America and the Caribbean After NAFTA. *North American Journal of Economics and Finance*, 6(2), 121-148.
- Hix, S. (1998). The Study of the European Union II: the 'New Governance' Agenda and its Rival. *Journal of European Public Policy*, 5(1), 38-65.
- Hoffman, S. (1966). Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe. *Daedalus*, 95(3), 862-915.
- Hoffmann, S. (1995). *The European Sisypheus: Essays on Europe, 1964-1994*. Boulder: Westview Press.
- Holley, W. H., Jennings, K. M., and Wolters, R. S. (2008). Labor Relations in Multinational Corporations and in Other Countries. In *The Labor Relations Process* (pp. 623-664). Mason: South-Western Cengage Learning.
- Hopkin, J. (2002). Comparative Methods. In D. Marsh, and G. Stoker (Eds.), *Theory and Methods in Political Science* (pp. 249-267). Basingstoke: Palgrave Macmillan.

- Housman, R. F., and Orbuch, P. M. (1992). Integrating Labor and Environmental Concerns into the North American Free Trade Agreement: A Look Back and a Look Ahead. *American University Journal of International Law and Policy*, 8(1), 719-815.
- Hovis, J. H. (1994, February 14). *General Electric Company: Submission and Request for Review*. Retrieved June 11, 2013, from Initial Public Communication 1994-02: <http://new.naalc.org/index.cfm?page=1070>
- HRSD. (2011, November 2). *Canadian Ratification of ILO Conventions*. Retrieved March 18, 2012, from Human Resources and Skills Development Canada: [http://www.hrsdc.gc.ca/eng/labour/labour\\_globalization/ila/rep\\_canada/ratification\\_ilo.shtml](http://www.hrsdc.gc.ca/eng/labour/labour_globalization/ila/rep_canada/ratification_ilo.shtml)
- Huelshoff, M. G. (1994). Domestic Politics and Dynamic Issue Linkage: A Reformulation of Integration Theory. *International Studies Quarterly*, 38(2), 255-279.
- Hufbauer, G. C., and Goodrich, B. (2004). Lessons from NAFTA. In J. J. Schott, *Free Trade Agreements* (pp. 37-50). Washington, D.C.: Institute for International Economics.
- Hufbauer, G. C., and Schott, J. J. (1993). *NAFTA: An Assessment*. Washington, D.C.: Institute for International Economics.
- Hufbauer, G. C., and Schott, J. J. (2002). *North American Labor Under NAFTA*. Retrieved May 22, 2013, from CiteSeerX - The Pennsylvania State University: <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.199.4703>
- Hufbauer, G. C., and Schott, J. J. (2005). *NAFTA Revisited: Achievements and Challenges*. Washington, D.C.: Institute for International Economics.
- Hufbauer, G. C., and Wong, Y. (2003). Security and the Economy in the North American Context: the Road Ahead for NAFTA. *Canada-United States Law Journal*, 29, 53-69.
- Human Rights Watch. (2001). *Trading Away Rights: Unfulfilled Promise of NAFTA's Labor Side Agreement*. New York: Human Rights Watch.
- Hunt, W. (1994). The First Three Months of the Chretien Government: Governing in the Wake of the Charter of Rights and NAFTA. *The London Journal of Canadian Studies*, 10, 14-25.
- Hussain, I. (2001). Similar Feathers or Different Stripes? Mexico, Turkey, and the Limits of Regional Integration. *Proceedings of the European Community Studies Association Seventh Biennial International Conference* (pp. 1-31). Madison: University of Pittsburgh.
- Hussain, I. (2008). *Community, Diffusion and North American Expansiveness: The Political Economy of Flux*. México, D.F.: Universidad Iberoamericana.
- Hussain, I. (Ed.). (2009). *North America at the Crossroads: NAFTA After 15 Years*. México, D.F.: Universidad Iberoamericana.
- Hussain, I., Pattanayak, S. R., and Hira, A. (2008). *North American Homeland Security: Back to Bilateralism?* Westport: Praeger Security International.

- Husted, B. W., and Logsdon, J. M. (1997, Winter). The Impact of NAFTA on Mexico's Environmental Policy. *Growth and Change*, 28, 24-48.
- IBWC. (2013). *The International Boundary and Water Commission: Its Mission, Organization and Procedures for Solution of Boundary and Water Problems*. Retrieved January 22, 2013, from International Boundary and Water Commission: <http://www.ibwc.state.gov/home.html>
- ICEM. (2007, November 25). *Mexican Government Calls Foul on North Carolina Union-Busting*. Retrieved June 24, 2013, from International Federation of Chemical, Energy, Mine and General Workers' Unions: [http://www.alternet.org/story/66965/mexican\\_government\\_calls\\_foul\\_on\\_north\\_carolina\\_union-busting](http://www.alternet.org/story/66965/mexican_government_calls_foul_on_north_carolina_union-busting)
- ICSID. (2000, August 30). *Metalclad Corporation v. United Mexican States: Award*. Retrieved June 29, 2012, from International Centre For Settlement of Investment Disputes: [http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRHandactionVal=showDocanddocId=DC542\\_EnandcaseId=C155](http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRHandactionVal=showDocanddocId=DC542_EnandcaseId=C155)
- ICSID. (2012). *ICSID 2012 Annual Report*. Retrieved July 12, 2013, from International Centre for the Settlement of Investment Disputes: [https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRHandactionVal=ViewAnnualReportsandyear=2012\\_Eng](https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRHandactionVal=ViewAnnualReportsandyear=2012_Eng)
- ICSID. (2013, November 1). *List of Contracting States and Other Signatories of the Convention*. Retrieved November 4, 2013, from International Centre for Settlement of Investment Disputes: <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRHandactionVal=ShowDocumentandlanguage=English>
- IJC. (2013). *Origins of the Boundaries Water Treaty*. Retrieved February 23, 2013, from International Joint Commission: <http://bwt.ijc.org/index.php?page=origins-of-the-boundaries-water-treatyandhl=eng>
- IJC. (2013). *Role of the IJC*. Retrieved February 3, 2013, from International Joint Commission: [http://www.ijc.org/en/\\_Role\\_of\\_the\\_Commission](http://www.ijc.org/en/_Role_of_the_Commission)
- IJC. (2013, January 25). *Treaties and Agreements: About the Great Lakes Water Quality Agreement*. Retrieved February 4, 2013, from International Joint Commission: <http://www.ijc.org/rel/agree/quality.html#agrm>
- IJC. (2013, January 25). *Who We Are*. Retrieved February 3, 2013, from International Joint Commission: [http://www.ijc.org/en/background/ijc\\_cmi\\_nature.htm#What](http://www.ijc.org/en/background/ijc_cmi_nature.htm#What)
- ILO. (2012). *The US: A Leading Role in the ILO*. Retrieved February 13, 2012, from International Labour Organization: <http://www.ilo.org/washington/ilo-and-the-united-states/the-usa-leading-role-in-the-ilo/lang--en/index.htm>
- ILO. (2013). *Decent Work Agenda*. Retrieved April 23, 2013, from International Labour Organization: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

- ILO. (2013). *NORMLEX - Information System on International Labour Standards: Ratificaciones por País*. Retrieved April 30, 2013, from Organización Internacional del Trabajo: <http://www.ilo.org/dyn/normlex/es/f?p=1000:11001:0::NO::>
- Inglehart, R. F., Nevitte, N., and Basaf, M. (1996). *The North American Trajectory: Cultural, Economic, and Political Ties among the United States, Canada, and Mexico*. New York: De Gruyter.
- Ingram, H., and White, D. R. (1993). International Boundary and Water Commission: An Institutional Mismatch for Resolving Transboundary Water Problems. *Natural Resources Journal*, 33(1), 153–176.
- Inside U.S. Trade. (1993, June 25). *NewsStand*. Retrieved April 4, 2014, from Inside U.S. Trade: <http://wtoneewsstand.com/Inside-US-Trade/Inside-U.S.-Trade-06/25/1993/menu-id-445.html>
- Institut National D'Études Démographiques. (2010, December 28). *The Population of the European Union*. Retrieved August 27, 2011, from Institut National D'Études Démographiques: [http://www.ined.fr/en/everything\\_about\\_population/graph\\_month/population\\_ue/](http://www.ined.fr/en/everything_about_population/graph_month/population_ue/)
- Instituto Nacional de Estadística y Geografía. (2011). *Censo General de Población y Vivienda 1990, Población total*. Retrieved August 27, 2011, from Instituto Nacional de Estadística y Geografía: [http://www.inegi.org.mx/lib/Olap/consulta/general\\_ver4/MDXQueryDatos.asp?proy=cpv90\\_pt](http://www.inegi.org.mx/lib/Olap/consulta/general_ver4/MDXQueryDatos.asp?proy=cpv90_pt)
- Instituto Nacional de Estadística y Geografía. (2011). *Cuentas Nacionales, Cuentas Económicas Totales, Producto Interno Bruto a precios de 2003*. Retrieved August 26, 2011, from Banco de Información Económica, Instituto Nacional de Estadística y Geografía: <http://dgcnestyp.inegi.gob.mx/cgi-win/bdieintsi.exe/NIVR1501100170#ARBOL>
- International Institute for Sustainable Development. (2003). *IISD Trade and Development Brief: Special and Differential Treatment*. Retrieved October 7, 2012, from International Institute for Sustainable Development: [http://www.iisd.org/pdf/2003/investment\\_sdc\\_may\\_2003\\_2.pdf](http://www.iisd.org/pdf/2003/investment_sdc_may_2003_2.pdf)
- Iritani, E. (2001, June 14). *Metalclad NAFTA Dispute Is Settled*. Retrieved July 16, 2013, from Los Angeles Times: <http://articles.latimes.com/2001/jun/14/business/fi-10239>
- Isa, J. P. (1998). Testing the NAALC's Dispute Resolution System: A Case Study. *Journal of Gender and the Law*, 6(3), 615-652.
- ITAM. (2011). Avances del BDAN sobre Financiamiento. *México en el Mundo*, 7(17), 9-10.
- Jachtenfuchs, M. (2001). The Governance Approach to European Integration. *Journal of Common Market Studies*, 39(2), 245-264.
- Jachtenfuchs, M. (2002). Deepening and Widening Integration Theory. *Journal of European Public Policy*, 9(4), 650–657.

- Jervis, R. (1999). Realism, Neoliberalism, and Cooperation: Understanding the Debate. *International Security*, 24(1), 42-63.
- Jones, R. C. (2002). NAFTA Chapter 11 Investor-to-State Dispute Resolution: A Shield to Be Embraced or a Sword to Be Feared? *Brigham Young University Law Review*, 2002(2), 527-559.
- Jong Choi, Y., and Caporaso, J. A. (2002). Comparative Regional Integration. In W. Carlsnaes, T. Risse, and B. A. Simmons (Eds.), *Handbook of International Relations* (pp. 480-499). London: SAGE Publications.
- JPAC. (2013). *JPAC Questionnaire on Submitters' Experience with the Citizen Submission Process under NAAEC Articles 14 and 15*. Retrieved March 12, 2013, from Commission for Environmental Cooperation: [http://www.cec.org/Page.asp?PageID=924&ContentID=25124&AA\\_SiteLanguageID=1#Q8](http://www.cec.org/Page.asp?PageID=924&ContentID=25124&AA_SiteLanguageID=1#Q8)
- Kaufmann-Kohler, G. (2011). *Fifteen Years of NAFTA Chapter 11 Arbitration*. Retrieved July 10, 2013, from JurisNet: [http://www.arbitration-icca.org/media/1/13571335953400/interpretive\\_powers\\_of\\_the\\_free\\_trade\\_commission\\_and\\_the\\_rule\\_of\\_law\\_kaufmann-kohler.pdf](http://www.arbitration-icca.org/media/1/13571335953400/interpretive_powers_of_the_free_trade_commission_and_the_rule_of_law_kaufmann-kohler.pdf)
- Kay, T. (2005). Labor Transnationalism and Global Governance: The Impact of NAFTA on Transnational Labor Relationships in North America. *American Journal of Sociology*, 111(3), 715-756.
- Kay, T. (2011). *NAFTA and the Politics of Labor Transnationalism*. New York: Cambridge University Press.
- Keller, M. (2012, August 12). *Explainer: What Is Mercosur?* Retrieved April 25, 2014, from Americas Society/Council of the Americas: <http://www.as-coa.org/articles/explainer-what-mercotur-0>
- Kelly, M. E., and Reed, C. (2003). The CEC's Trade and Environment Program: Cutting Edge Analysis but Untapped Potential. In D. L. Markell, and J. H. Knox (Eds.), *Greening NAFTA: The North American Commission for Environmental Cooperation* (pp. 101-116). Stanford: Stanford University Press.
- Keresztezi, N. (2004). Linking Labour Rights and International Trade: Evaluating the NAALC Model. In M. Irish (Ed.), *The Auto Pact: Investment, Labour, and the WTO* (pp. 197-241). Bodmin: Kluwer Law International.
- Kibel, P. S. (2001). The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case. *Columbia Journal of Transnational Law*, 39, 395-482.
- Kinnear, M., Owen, M., East, R., Gallus, N., and Spelliscy, S. (2008, September 15). *Vito G. Gallo v. Canada: Statement of Defence*. Retrieved July 24, 2013, from Department of Foreign Affairs, Trade and Development Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/disp-diff/gallo-04.pdf>

- Knox, J. H. (2004). Separated at Birth: The North American Agreements on Labor and the Environment. *Loyola of Los Angeles International and Comparative Law Review*, 26(3), 359-388.
- Knox, J. H., and Markell, D. L. (2003). *Greening NAFTA: The North American Commission for Environmental Cooperation*. Stanford: Stanford University Press.
- Knox, J. H., and Markell, D. L. (2003). The Innovative North American Commission for Environmental Cooperation. In D. L. Markell, and J. H. Knox (Eds.), *Greening NAFTA: The North American Commission for Environmental Cooperation* (pp. 1-21). Stanford: Stanford University Press.
- Krueger, A. (1993). *NBER Working Paper: Free Trade Agreements as Protectionist Devices: Rules of Origin*. Cambridge: National Bureau of Economic Research.
- Krueger, A. (1999). Are Preferential Trading Arrangements Trade-Liberalizing or Protectionist? *Journal of Economic Perspectives*, 13(4), 105-124.
- Kukucha, C. J. (2008). *The Provinces and Canadian Foreign Trade Policy*. Vancouver: UBC Press.
- Kurtz, J. (2002). A General Investment Agreement in the WTO? Lessons from Chapter 11 of NAFTA and the OECD Multilateral Agreement on Investment. *University of Pennsylvania Journal of International Economic Law*, 23(4), 713-789.
- Lantis, J. S. (2005). Leadership Matters: International Treaty Ratification in Canada and the United States. *American Review of Canadian Studies*, 35(3), 383-421.
- Laursen, F. (2010). *Comparative Regional Integration: Europe and Beyond*. Farnham: Ashgate.
- Lee, D. (1999). Theorizing Regional Trade Groups in the Americas. *Review of International Political Economy*, 6(1), 110-119.
- Lee, L. B. (1966). The Canadian-American Irrigation Frontier, 1884-1914. *Agricultural History*, 40(4), 271-284.
- LegiScan. (2013). *Bill Text: NC Senate Bill 386 - 2011-2012 Session*. Retrieved June 21, 2013, from LegiScan: Bringing People to the Process: <http://legiscan.com/gaits/text/251059>
- Lehman, J. P. (2001). *US-Mexico Border Five Year Outlook: Environmental Infrastructure Funding Projections (2001-2005)*. Retrieved November 1, 2010, from North American Development Bank: [http://www.nadb.org/pdfs/pubs/Five\\_Year\\_Outlook.pdf](http://www.nadb.org/pdfs/pubs/Five_Year_Outlook.pdf)
- Leising, M. (2000). *El Paso: NADBank*. Retrieved October 18, 2010, from University of California at Berkeley: <http://journalism.berkeley.edu/projects/border/elpasonadbank.html>
- Levinson, J. I. (1993). *Economic Policy Institute Briefing Paper: The Labor Side Accord to the North American Free Trade Agreement: An Endorsement of Abuse of Worker Rights in Mexico*. Retrieved April 19, 2014, from Institute for Agriculture and Trade Policy: [http://www.iatp.org/files/Labor\\_Side\\_Accord\\_to\\_the\\_North\\_American\\_Free\\_T.pdf](http://www.iatp.org/files/Labor_Side_Accord_to_the_North_American_Free_T.pdf)

- Lindberg, L. N. (1971). Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement. In L. N. Lindberg, and S. A. Scheingold (Eds.), *Regional Integration: Theory and Research*. Cambridge: Harvard University Press.
- Lindberg, L. N., and Scheingold, S. A. (1970). *Europe's Would-be Polity: Patterns of Change in the European Community*. Englewood Cliffs: Prentice-Hall.
- Lipsey, R. G., and Smith, M. G. (2011). Multilateral Versus Regional Trading Arrangements: Substitutes or Compliments? In M. N. Jovanović (Ed.), *International Handbook of the Economics of Integration: General Issues and Regional Groups* (Vol. I, pp. 90-120). Cheltenham: Edward Elgar Publishing.
- Logsdon, J. M., and Husted, B. W. (2000). Mexico's Environmental Performance Under NAFTA: The First 5 Years. *The Journal of Environment and Development*, 9(4), 370-383.
- López Villafañe, V. (2004, June). La Dinámica de México y Canadá en el TLCAN: 1994-2004. *Revista Mexicana de Estudios Canadienses*(7), 109-123.
- Los Angeles Times. (1893, October 11). *Irrigation: The International Congress Opens*. Retrieved February 23, 2013, from Los Angeles Public Library: <http://ezproxy.lapl.org/login?url=http://proquest.umi.com/pqdweb?did=323244132andsid=15andFmt=10andclientId=13322andRQT=309andVName=HNP>
- Low, P., and Subramanian, A. (1996). Beyond TRIMS: A Case for Multilateral Action on Investment Rules and Competition Policy. In W. Martin, and L. A. Winters (Eds.), *The Uruguay Round and the Developing Countries* (pp. 380-408). Cambridge University Press: Cambridge.
- Macdonald, L. (2011). Regionalism in Flux: Politics, Economics, and Security in the North American Region. In M. T. Shaw, J. A. Grant, and S. Cornelissen (Eds.), *The Ashgate Research Companion to Regionalisms* (pp. 113-128). Farnham: Ashgate.
- Malamud, A. (2005). *Spillover in European and South American Integration: A Comparative Evaluation*. Lisboa: Centre for Research and Studies in Sociology.
- Malamud, A. (2011). Conceptos, Teorías y Debates sobre la Integración Regional. *Norteamérica*, 6(2), 219-249.
- Malamud, A. (2013). Conceptos, Teorías y Debates sobre la Integración Regional. *Brazilian Journal of International Relations*, 367-397.
- Mann, H., and Von Moltke, K. (2002, March-April). *Protecting Investor Rights and the Public Good: Assessing NAFTA's Chapter 11*. Retrieved September 17, 2012, from International Institute for Sustainable Development: [http://michelbeauregard.homestead.com/casestudymidtermnaftabackground\\_en.pdf](http://michelbeauregard.homestead.com/casestudymidtermnaftabackground_en.pdf)
- Mann, M. (1993). Nation-States in Europe and Other Continents: Diversifying, Developing, Not Dying. *Daedalus*, 115-140.



- Máttar, J., Moreno Brid, J. C., and Peres, W. (2002). *Foreign Investment in Mexico after Economic Reform*. Mexico City: United Nations Economic Commission for Latin America and the Caribbean.
- Mattli, W., and Stone Sweet, A. (2012). Regional Integration and the Evolution of the European Polity: On the Fiftieth Anniversary of the Journal of Common Market Studies. *Journal of Common Market Studies*, 50(S1), 1-17.
- Mayer, F. W. (1998). *Interpreting NAFTA: The Science and Art of Political Analysis*. New York: Columbia University Press.
- McBride, S. (2009). The Political Economy of Neoliberalism in North America. In S. Ayres, and L. Macdonald (Eds.), *Contentious Politics in North America: National Protest and Transnational Collaboration under Continental Integration* (pp. 16-36). Basingstoke: Palgrave Macmillan.
- McDougall, J. N. (2006). *Drifting Together: The Political Economy of Canada-U.S. Integration*. Peterborough: Broadview Press.
- McFadyen, J. (1998). *NAFTA Supplemental Agreements: Four Year Review*. Retrieved March 10, 2013, from Peterson Institute for International Economics: <http://www.iie.com/publications/wp/print.cfm?ResearchId=145anddoc=pub>
- McGuinness, M. J. (1994). The Protection of Labor Rights in North America: A Commentary on the North American Agreement on Labor Cooperation. *Stanford Journal of International Law*, 30, 579-596.
- McKeen-Edwards, H., Porter, T., and Roberge, I. (2004). Politics or Markets? The Determinants of Cross-Border Financial integration in the NAFTA and the EU. *New Political Economy*, 9(3), 325-340.
- McKennirey, J. S. (1996). Labor in the International Economy. *Canada-United States Law Journal*, 22, 183-193.
- McKinney, J. A. (2000). *Created from NAFTA: The Structure, Function, and Significance of the Treaty's Related Institutions*. Armonk: M. E. Sharpe.
- McLaughlin Hager, M. (1996). *NAFTA and Workers: The Record so Far*. Retrieved June 13, 2012, from Biblioteca Jurídica Virtual: <http://biblio.juridicas.unam.mx/libros/1/143/30.pdf>
- McRae, D. M., and Siwec, J. (2010). NAFTA Dispute Settlement: Success or Failure? In A. Oropeza García (Ed.), *América del Norte en el siglo XXI* (pp. 363-388). México, D.F.: Instituto de Investigaciones Jurídicas.
- Mercopress. (2014, January 29). *Brazil can't be hostage of Argentina or Venezuela in Mercosur/EU trade negotiations*. Retrieved April 30, 2014, from MercoPress: <http://en.mercopress.com/2014/01/29/brazil-can-t-be-hostage-of-argentina-or-venezuela-in-mercosur-eu-trade-negotiations>

- MERCOSUR. (2014). *Quienes Somos*. Retrieved April 23, 2014, from Mercosur: [http://www.mercosur.int/t\\_generic.jsp?contentid=3862andsite=1andchannel=secretariaandseccion=3](http://www.mercosur.int/t_generic.jsp?contentid=3862andsite=1andchannel=secretariaandseccion=3)
- Mérette, M., Georges, P., and Dissou, Y. (2008, July). *Liberalizing Foreign Direct Investment Restrictions in Canada: A Multi-Country Computable General Equilibrium Analysis*. Retrieved June 28, 2012, from EcoMod Network: <http://www.ecomod.org/files/papers/555.pdf>
- Mérette, M., Papadaki, E., Hernández, J., and Lan, Y. (2008, June). *Foreign Direct Investment Liberalization between Canada and the USA: a CGE Investigation*. Retrieved June 28, 2012, from CBS Interactive Business Network Resource Library: [http://findarticles.com/p/articles/mi\\_hb6413/is\\_2\\_36/ai\\_n29448720/pg\\_4/?tag=content;coll](http://findarticles.com/p/articles/mi_hb6413/is_2_36/ai_n29448720/pg_4/?tag=content;coll)
- Merideth, E., and Brown, G. (1995). The Maquiladora Health and Safety Support Network: A Case Study of Public Health Without Borders. *Social Justice*, 22(4), 85-88.
- Mikulas, N. (1999). Innovative Twist on Free Trade and International Environmental Treaty Enforcements: Checking in on NAFTA's Seven-Year Supervision of the US-Mexico Border Pollution Problems. *Tulane Environmental Law Journal*, 12(2), 497-518.
- Mitrany, D. (1965). The Prospect of Integration: Federal or Functional. *Journal of Common Market Studies*, 4(2), 119-149.
- Morales Moreno, I. (2008). *Post-NAFTA North America*. Basingstoke: Palgrave Macmillan.
- Moravcsik, A. (1993). Preferences and Power in the European Community: A Liberal Intergovernmentalism Approach. *Journal of Common Market Studies*, 31(4), 473-524.
- Moravcsik, A. (1998). *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca: Cornell University Press.
- Moravcsik, A. (2006). Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. In M. Eilstrup-Sangiovanni (Ed.), *Debates on European Integration: A Reader* (pp. 264-303). Basingstoke: Palgrave Macmillan.
- Moravcsik, A. (2010). *Liberal Theories of International Relations: A Primer*. Retrieved October 4, 2013, from Academic Articles, Book Chpters and Working Papers: <http://www.princeton.edu/~amoravcs/publications.html>
- Moravcsik, A., and Schimmelfennig, F. (2009). Liberal Intergovernmentalism. In A. Wiener, and T. Diez (Eds.), *European Integration Theory* (pp. 67-87). Oxford: Oxford University Press.
- Moss, A. H. (Ed.). (1994). *NAFTA: Assessments of the North American Free Trade Agreement*. Lynne Rienner: Boulder.
- Muldoon, P. (2012). Governance in the Great Lakes: A Regime in Transition. In V. I. Grover, and G. Krantzberg (Eds.), *Great Lakes: Lessons in Participatory Governance* (pp. 44-66). Boca Raton: CRC Press.

- Mumme, S. P. (1985). State Influence in Foreign Policymaking: Water Related Environmental Disputes along the United States-Mexico Border. *The Western Political Quarterly*, 38(4), 620-640.
- Mumme, S. P. (1995). The New Regime for Managing US-Mexican Water Resources. *Environmental Management*, 19(6), 827-835.
- Mumme, S. P., and Lybecker, D. (2011). The Commission for Environmental Cooperation as a Model for Promoting Sustainable Development in the Americas. *International Journal of Sustainable Society*, 3(2), 151-173.
- Munro, D. (1999). *NAFTA and Maquiladoras*. Retrieved April 12, 2012, from The University of Arizona: <http://www.ic.arizona.edu/ic/mcbride/ws200/munr-heal.htm>
- Murray, P. (2010). Comparative Regional Integration in the EU and East Asia: Moving Beyond Integration Snobbery. *International Politics*, 47, 308–323.
- NAALC. (2012). *Annex 1: Labour Principles*. Retrieved February 8, 2012, from Secretariat of the Commission for Labor Cooperation: [http://new.naalc.org/naalc/naalc-full-text/annex\\_one.htm](http://new.naalc.org/naalc/naalc-full-text/annex_one.htm)
- NAALC. (2012). *Part Four: Cooperative Consultations and Evaluations*. Retrieved February 10, 2012, from Secretariat of the Commission for Labor Cooperation: [http://new.naalc.org/naalc/naalc-full-text/part\\_four\\_cooperative.htm](http://new.naalc.org/naalc/naalc-full-text/part_four_cooperative.htm)
- NADBank. (2004, August 6). *Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank*. Retrieved March 13, 2013, from North American Development Bank: [http://www.nadbank.org/pdfs/publications/Charter\\_2004\\_Eng.pdf](http://www.nadbank.org/pdfs/publications/Charter_2004_Eng.pdf)
- NADBank. (2012). *Capitalization*. Retrieved March 2013, from North American Development Bank: <http://www.nadbank.org/about/capitalization.asp>
- NADBank. (2012, December 31). *Summary of Project Implementation Activities*. Retrieved April 9, 2013, from North American Development Bank : <http://www.nadbank.org/pdfs/FreqUpdates/ProjectMatrix.pdf>
- NAFTA Secretariat. (2013, July 10). *Chapter Eleven: Investment*. Retrieved July 11, 2013, from North American Free Trade Agreement (NAFTA) Secretariat: <http://www.nafta-sec-alena.org/en/view.aspx?x=343andmtpiID=142#A1124>
- Nalda, C. M. (1992). NAFTA, Foreign Investment, and the Mexican Banking System. *George Washington Journal of International Law and Economics*, 26, 379-412.
- Nejamkis, G. (2013, December 5). *Argentina-Brazil patch up on trade, look to Europe deal*. Retrieved April 30, 2014, from Reuters: <http://www.reuters.com/article/2013/12/05/us-trade-brazil-argentina-eu-idUSBRE9B40ZN20131205>
- Niemman, A., and Schmitter, P. C. (2009). Neofunctionalism. In A. Wiener, and T. Diez (Eds.), *European Integration Theory* (pp. 45-66). Oxford: Oxford University Press.

- Nolan García, K. A. (2011). The Evolution of United States–Mexico Labor Cooperation (1994–2009): Achievements and Challenges. *Politics and Policy*, 39(1), 91–117.
- Nolan García, K. A. (2012). The Evolution of US-Mexico Labor Cooperation: The NAALC Institutions and their Policy Challenges. *Proceedings of the Colloquia Access, Boundaries and Cooperation: The ABCs of North American Security* (pp. 1–8). Miami: Jack D. Gordon Institute for Public Policy and Citizenship Studies, Florida International University.
- North American Transportation Statistics. (2012, November 12). *Comercio Exterior de México con Canadá y Estados Unidos Según Modo de Transporte*. Retrieved February 12, 2013, from North American Transportation Statistics: [http://nats.sct.gob.mx/6-1b\\_es.html](http://nats.sct.gob.mx/6-1b_es.html)
- North Carolina General Assembly. (2012). *North Carolina General Statutes*. Retrieved June 12, 2012, from North Carolina General Assembly: [http://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_95/gs\\_95-98.html](http://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_95/gs_95-98.html)
- Nunnenkamp, P., and Pant, M. (2003, March). *Why the Case for a Multilateral Agreement on Investment is Weak*. Retrieved September 9, 2012, from Kiel Discussion Papers 400, Leibniz Information Centre for Economics: <http://www.econstor.eu/bitstream/10419/2931/1/kd400.pdf>
- Nye, J. S. (1968). Comparative Regional Integration: Concept and Measurement. *International Organization*, 22(4), 855–880.
- O'Brien, R. (1995). North American Integration and International Relations Theory. *Canadian Journal of Political Science*, 28(4), 693–724.
- OECD. (1998). *OECD Proceedings: Migration, Free Trade and Regional Integration in North America*. Paris: Organisation for Economic Co-Operation and Development.
- OECD. (2012, August 27). *FDI Flows by Partner Country*. Retrieved August 27, 2012, from OECD.StatExtracts | Organisation for Economic Co-Operation and Development: <http://stats.oecd.org/#>
- Øhrgaard, J. C. (1997). "Less than Supranational, More than Intergovernmental": European Political Cooperation and the Dynamics of Intergovernmental Integration. *Journal of International Studies*, 26(1), 1–29.
- OIT México y Cuba. (2012). *Historia de la Oficina de la OIT en México*. Retrieved February 13, 2012, from Organización Internacional del Trabajo: [http://www.oit.org.mx/index.php?option=com\\_contentandview=articleandid=63andItemid=64](http://www.oit.org.mx/index.php?option=com_contentandview=articleandid=63andItemid=64)
- Olson, M. (1965). *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge: Harvard University Press.
- Ozarow, D. (2013). Pitching for each others' team: the North American Free Trade Agreement and labor transnationalism. *Labor History*, 54(5), 512–526.

- Park, D., and Ruiz Estrada, M. A. (2010, May). *A New Multi-Dimensional Framework for Analyzing Regional Integration: Regional Integration Evaluation (RIE) Methodology*. Retrieved October 23, 2012, from Asian Development Bank: [http://aric.adb.org/pdf/workingpaper/WP49\\_Multi\\_Dimensional\\_Framework.pdf](http://aric.adb.org/pdf/workingpaper/WP49_Multi_Dimensional_Framework.pdf)
- Parrish, A. L. (2006). Mixed Blessings: The Great Lakes Compact and Agreement, the IJC and International Dispute Resolution. *Michigan State Law Review*, 5, 1-23.
- Pastor, R. A. (2001). *Toward a North American Community: Lessons from the Old World for the New*. Washington, DC: Institute for International Economics.
- Pastor, R. A. (2005). A North American Community Approach to Security. *Testimony Invited by the Subcommittee on the Western Hemisphere, U.S. Senate Foreign Relations Committee* (pp. 1-8). Washington, D.C.: Center for North American Studies, American University.
- Pastor, R. A. (2011). *The North American Idea: A Vision of a Continental Future*. New York: Oxford University Press.
- Patton, K. W. (1994). Dispute Resolution under the North American Commission on Environmental Cooperation. *Duke Journal of Comparative and International Law*, 5(1), 87-116.
- Pearce, C. C., and Carvajal Isunza, G. (2001, July 17). *Notice of Claim: Metalclad Corporation vs. The Government of the United Mexican States and the Mexican State of San Luis Potosí*. Retrieved July 13, 2013, from NAFTA Claims: <http://naftaclaims.com/Disputes/Mexico/Metalclad/MetalcladNoticeOfArbitration.pdf>
- Pentland, C. (1973). *International Theory and European Integration*. New York: The Free Press.
- Perezcano Díaz, H. (1999, November 9). *Metalclad Corporation v. United Mexican States: Respondent's Post-Hearing Submission*. Retrieved July 14, 2013, from NAFTA Claims: <http://naftaclaims.com/Disputes/Mexico/Metalclad/MetalcladMexicoPostHearingBrief.pdf>
- Peschard-Sverdrup, A. B. (2007). *North American Future 2025 Project*. Washington, D.C.: Center for Strategic and International Studies.
- Petersmann, E.-U. (1998). From the Hobbesian International Law of Coexistence to Modern Integration Law: The WTO Dispute Settlement System. *International Economic Law*, 1(2), 175-198.
- Peterson, L. E. (2010, June 28). *International Investment Agreements*. Retrieved September 14, 2012, from Initiative for Policy Dialogue: [http://policydialogue.org/files/publications/International\\_Investment\\_Agreements.pdf](http://policydialogue.org/files/publications/International_Investment_Agreements.pdf)
- Pierson, P. (1998). The Path to European Integration: A Historical-Institutional Analysis. In W. Sandholtz, and A. Stone Sweet (Eds.), *European Integration and Supranational Governance* (pp. 27-58). Oxford: Oxford University Press.

- Poitras, G. E. (2002). *Inventing North America: Canada, Mexico and the United States*. Boulder: Lynne Rienner.
- Poitras, G., and Robinson, R. (1994). The Politics of NAFTA in Mexico. *Journal of Interamerican Studies and World Affairs*, 36(1), 1-35.
- Pollack, M. A. (2010). Theorizing EU Policy-Making. In H. Wallace, M. A. Pollack, and A. R. Young (Eds.), *Policy-Making in the European Union* (pp. 15-44). Oxford: Oxford University Press.
- Pomfret, R. (1997). *The Economics of Regional Trading Arrangements*. Oxford: Oxford University Press.
- Pomfret, R. (2008). *Lecture Notes On International Trade Theory And Policy*. Adelaide: University of Adelaide.
- Primo Braga, C. A., Safadi, R., and Yeats, A. (1994). Regional Integration in the Americas: Déjà Vu All Over Again? *The World Economy*, 17(4), 577–602.
- Puchala, D. J. (1972). Of Blind Men, Elephants and International Integration. *Journal of Common Market Studies*, 10(3), 267-284.
- Puchala, D. J. (1999). Institutionalism, Intergovernmentalism and European Integration: A Review Article. *Journal of Common Market Studies*, 37(2), 317–331.
- Raustiala, K. (1995). The Political Implications of the Enforcement Provisions of the NAFTA Environmental Side Agreement: the CEC as a Model for Future Accords. *Environmental Law*, 25(1), 31-56.
- Raustiala, K. (2003). Citizen Submissions and Treaty Review in the NAAEC. In D. L. Markell, and J. H. Knox (Eds.), *Greening NAFTA: The North American Commission for Environmental Cooperation* (pp. 256-273). Stanford: Stanford University Press.
- Raustiala, K. (2004). Police Patrols and Fire Alarms in the NAAEC. *Loyola of Los Angeles International and Comparative Law Review*, 26, 389-413.
- Reisman, D. (1990). *Theories of Collective Action: Downs, Olson and Hirsch*. Basingstoke: Macmillan.
- RIKS. (2012). *Regional Integration Knowledge System*. Retrieved December 27, 2012, from United Nations University Institute for Comparative Regional Integration Studies: <http://www.cris.unu.edu/riks/web/static/about>
- Risse-Kappen, T. (1996). Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union. *Journal of Common Market Studies*, 34(1), 53-80.
- Roessler, F. (1993). The Relationship between Regional Integration Agreements and the Multilateral Trade Order. In K. Anderson, and R. Blackhurst (Eds.), *Regional Integration and the Global Trading System* (pp. 311-325). Hemel Hempstead: Harvester Wheatsheaf.

- Rosa, A. K. (1993). Old Wine, New Skins: NAFTA and the Evolution of International Trade Dispute Resolution. *Michigan Journal of International Law*, 15(1), 255-305.
- Rosamond, B. (2000). *Theories of European Integration*. Basingstoke: Palgrave Macmillan.
- Rosamond, B. (2005). Conceptualizing the EU Model of Governance in World Politics. *European Foreign Affairs Review*, 10(4), 463-478.
- Rosamond, B. (2005). *The Uniting of Europe and the Foundation of EU Studies: Revisiting the Neofunctionalism of Ernst B. Haas*. Retrieved February 24, 2011, from University of Warwick Institutional Repository:  
[http://wrap.warwick.ac.uk/1076/1/WRAP\\_Rosamond\\_9570885-150709-rosamond\\_jepp\\_05.pdf](http://wrap.warwick.ac.uk/1076/1/WRAP_Rosamond_9570885-150709-rosamond_jepp_05.pdf)
- Roy, J., and Domínguez, R. (Eds.). (2005). *The European Union and Regional Integration: A Comparative Perspective and Lessons for the Americas*. Miami: University of Miami.
- Sabet, D. (2005). Building Bridges: Binational Civil Society Cooperation and Water-Related Policy Problems. *The Journal of Environment and Development*, 463-485.
- Salinas, C. (2010, October 25). *México: TLC fue un Instrumento y no una Panacea: Carlos Salinas*. Retrieved February 12, 2013, from InfoLatam:  
<http://www.infolatam.com/2010/10/26/mexico-tlc-fue-un-instrumento-y-no-una-panacea-carlos-salinas/>
- Salvatore, D. (2007). Economic Effects of NAFTA on Mexico. *Global Economy Journal*, 7(1), 1-13.
- Sánchez Castañeda, A. (2011). El Acuerdo de Cooperación Laboral de América del Norte: De la Ilusión a la Desilusión. In A. Oropeza García (Ed.), *TLCAN: Reflexiones y Propuestas a Quince Años de su Firma* (pp. 361-389). México, D.F.: H. Cámara de Diputados LXI Legislatura; Universidad Nacional Autónoma de México.
- Sánchez Rodríguez, R. A. (1993). Public Participation and the IBWC: Challenges and Options. *Natural Resources Journal*, 33, 283-298.
- Sánchez Rodríguez, R. A. (2002). Governance, Trade, and the Environment in the Context of NAFTA. *American Behavioral Scientist*, 45(9), 1369-1393.
- Sandholtz, W. (1998). The Emergence of a Supranational Telecommunications Regime. In W. Sandholtz, and A. Stone Sweet (Eds.), *European Integration and Supranational Governance* (pp. 134-163). Oxford: Oxford University Press.
- Sandholtz, W., and Stone Sweet, A. (1998). Integration, Supranational Governance and the Institutionalization of the European Polity. In W. Sandholtz, and A. Stone Sweet, *European Integration and Supranational Governance* (pp. 1-26). Oxford, United Kingdom: Oxford University Press.
- Sandholtz, W., and Stone Sweet, A. (1999). European Integration and Supranational Governance Revisited: Rejoinder to Branch and Øhrgaard. *Journal of European Public Policy*, 6(1), 144-154.

- Sandholtz, W., and Stone Sweet, A. (2012, January). *Neo-functionalism and Supranational Governance*. Retrieved November 27, 2013, from [http://works.bepress.com/cgi/viewcontent.cgi?article=1037&context=alec\\_stone\\_sweet](http://works.bepress.com/cgi/viewcontent.cgi?article=1037&context=alec_stone_sweet)
- Sands, C. (2002). Integration: Process, Condition, or Doctrine? *North American Integration Monitor*, 1(1), 1-2.
- Santa-Cruz, A. (2012). On Globalisation and Region-Building: The Case of North America. In C. M. Dent, and J. Dosch (Eds.), *The Asia-Pacific, Regionalism and the Global System* (pp. 58-71). Cheltenham: Edward Elgar Publishing.
- Santos Azuela, H. (1998). Flexibilización de las Relaciones Laborales y el Nuevo Orden Económico Mundial. *Boletín Mexicano de Derecho Comparado*(91), 195-219.
- Schimmelfennig, F., and Rittberger, B. (2006). Theories of European Integration: Assumptions and Hypotheses. In J. Richardson (Ed.), *European Union: Power and Policy-making* (pp. 73-95). London: Routledge.
- Schmitter, P. C. (1970). A Revised Theory of Regional Integration. *International Organization*, 24(4), 836-868.
- Schmitter, P. C. (2002, July). *Neo-Neo-Functionalism*. Retrieved September 22, 2011, from European University Institute: <http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/NeoNeoFunctionalismRev.pdf>
- Schmitter, P. C. (2005). Ernst B. Haas and the Legacy of Neofunctionalism. *Journal of European Public Policy*, 12(2), 255–272.
- Schornack, D., and Nevin, J. (2006). *The International Joint Commission: A Case Study in the Management of International Waters*. Retrieved February 3, 2013, from Rosenberg International Forum on Water Policy, University of California: <http://rosenberg.ucanr.org/documents/Schornack-Rosenbergcanada.pdf>
- Schott, J. J. (2007). Trade Negotiations among NAFTA Partners: The Future of North American Economic Integration. In I. Studer, and C. Wise (Eds.), *Requiem or Revival? The Promise of North American Integration* (pp. 76-88). Washington, D.C.: Brookings Institution Press.
- Schott, J. J., and Gordon, M. (1988). *The Canada-United States Free Trade Agreement: The Global Impact*. Washington, D.C.: Institute for International Economics.
- Schurtman, M. (2005). Los 'Jonkeados' and the NAALC: the Autotrim/Customtrim and its Implications for Submissions under the NAFTA Labor Side Agreement. *Arizona Journal of International and Comparative Law*, 22(2), 291-388.
- Scott, J. A., and Brown, E. V. (1994). *Honeywell, Inc. Complaint*. Retrieved June 14, 2013, from Secretariat of the Commission for Labor Cooperation: <http://www.naalc.org/index.cfm?page=1070>



- Scott, R. E. (2003, November 17). The High Price of 'Free' Trade: NAFTA's Failure has Cost the United States Jobs Across the Nation. *EPI Briefing Paper #147*, 1-13.
- Seawright, J., and Gerring, J. (2008). Case Selection Techniques in Case Study Research : A Menu of Qualitative and Quantitative Options. *Political Research Quarterly*, 61(2), 294-308.
- Secretaría de Economía. (2013). *Solicitud de Controversias Inversionista - Estado*. Retrieved July 31, 2013, from Secretaría de Economía: <http://www.economia.gob.mx/comunidad-negocios/comercio-exterior/solucion-controversias/inversionista-estado>
- Secretaría del Mercosur. (2014). *Estructura Institucional del MERCOSUR*. Retrieved April 25, 2014, from Secretaría del Mercosur: [http://www.mercosur.int/innovaportal/file/492/1/estructura.noviembre\\_es.pdf](http://www.mercosur.int/innovaportal/file/492/1/estructura.noviembre_es.pdf)
- Secretaría del Trabajo y Previsión Social. (2011, June 7). *Centro de Documentación*. Retrieved April 4, 2014, from Secretaría del Trabajo y Previsión Social: [http://www.stps.gob.mx/bp/secciones/conoce/areas\\_atencion/areas\\_atencion/inclusion\\_laboral/capacitacion/centro\\_documentacion.html](http://www.stps.gob.mx/bp/secciones/conoce/areas_atencion/areas_atencion/inclusion_laboral/capacitacion/centro_documentacion.html)
- Secretaría del Trabajo y Previsión Social. (2014, April 3). *Boletín Conjunto: Declaración Ministerial Conjunta sobre Trabajadores Migratorios Firmada por el Secretario del Trabajo de EUA y el Secretario del Trabajo y Previsión Social de México*. Retrieved April 5, 2014, from Secretaría del Trabajo y Previsión Social: [http://www.stps.gob.mx/bp/secciones/sala\\_prensa/boletines/2014/abril/bol\\_211.html](http://www.stps.gob.mx/bp/secciones/sala_prensa/boletines/2014/abril/bol_211.html)
- Shaw, T. M., Grant, J. A., and Cornelissen, S. (2011). Introduction and Overview: The Study of New Regionalism(s) at the Start of the Second Debate of the Twenty-First Century. In T. M. Shaw, J. A. Grant, and S. Cornelissen (Eds.), *The Ashgate Research Companion to Regionalisms* (pp. 1-30). Farnham: Ashgate.
- Shoch, J. (2000). Contesting Globalization: Organized Labor, NAFTA, and the 1997 and 1998 Fast-Track Fights. *Politics and Society*, 28(1), 119-150.
- Shrybman, S. (1993). Trading Away the Environment. In R. Grinspun, and M. A. Cameron (Eds.), *The Political Economy of North American Free Trade* (pp. 271-294). New York: St. Martin's Press.
- SICE. (2013). *North American Free Trade Agreement: Part Five: Investment, Services and Related Matters*. Retrieved July 6, 2013, from Foreign Trade Information System: <http://www.sice.oas.org/trade/nafta/chap-111.asp>
- Simmons, B. A., Carlsnaes, W., and Risse, T. (2002). *Handbook of International Relations*. London: SAGE.
- Singh, P. (2002). NAFTA and Labor: A Canadian Perspective. *Journal of Labor Research*, 23(3), 433-446.
- Smith, M. G. (1993). The North American Free Trade Agreement: Global Impacts. In K. Anderson, and R. Blackhurst (Eds.), *Regional Integration and the Global Trading System* (pp. 83-103). Hemel Hempstead: Harvester Wheatsheaf.

- Smith, M. G. (2011). The North American Free Trade Agreement: Fait Accompli? In M. N. Jovanović (Ed.), *International Handbook on the Economics of Integration* (pp. 350-376). Cheltenham: Edward Elgar Publishing.
- Sparling, D. H., and Caswell, J. A. (2006). Risking Market Integration without Regulatory Integration: The Case of NAFTA and BSE. *Review of Agricultural Economics*, 28(2), 212-228.
- Springer, J. (2014, April 30). *ASEAN A Better Investment Than China For Businesses And Investors*. Retrieved May 1, 2014, from Forbes: <http://www.forbes.com/sites/jonspringer/2014/04/30/asean-a-better-investment-than-china-for-businesses-and-investors/>
- Staff, M. J., and Lewis, C. W. (2003). Arbitration under NAFTA Chapter 11: Past, Present, and Future. *Houston Journal of International Law*, 25(2), 301-340.
- Statistics Canada. (2009, December 16). *Gross Domestic Product (GDP), Canada and Jurisdictions, 1990, 1995 and 1999 to 2008*. Retrieved August 26, 2011, from Statistics Canada: <http://www.statcan.gc.ca/pub/81-582-x/2009003/tbl/f.1.1-eng.htm>
- Statistics Canada. (2010, December 1). *Population of Canada, provinces and territories in the last 50 years*. Retrieved August 27, 2011, from Statistics Canada: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-550/table/t1-eng.cfm>
- Statistics Canada. (2010, December 1). *Population of Canada, Provinces and Territories in the Last 50 years*. Retrieved August 27, 2011, from Statistics Canada: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-550/table/t1-eng.cfm>
- Statistics Canada. (2013, February 12). *Canadian International Merchandise Trade Database*. Retrieved February 12, 2013, from Statistics Canada: <http://www5.statcan.gc.ca/cimt-cicm/section-section?lang=eng&dataTransformation=2&refYr=1990&refMonth=12&freq=12&countryId=999&usaState=0&provId=1&retrieve=null&save=null&trade=World%20Trade>
- Stone Sweet, A., and Sandholtz, W. (1997). European Integration and Supranational Governance. *Journal of European Public Policy*, 4(3), 297-317.
- Stone Sweet, A., and Sandholtz, W. (1998). Integration, Supranational Governance, and the Institutionalization of the European Polity. In W. Sandholtz, and A. Stone Sweet (Eds.), *European Integration and Supranational Governance* (pp. 1-26). Oxford: Oxford University Press.
- Stone Sweet, A., Fligstein, N., and Sandholtz, W. (2001). The Institutionalization of European Space. In A. Stone Sweet, W. Sandholtz, and N. Fligstein (Eds.), *The Institutionalization of Europe* (pp. 1-28). Oxford: Oxford University Press.
- Studer, I. (2010). The NAFTA Side Agreements: Toward a More Cooperative Approach? *Wake Forest Law Review*, 45, 469-490.
- Studer, I., and Wise, C. (2007). *Requiem or Revival? The Promise of North American Integration*. Washington, D.C.: Brookings Institution Press.

- Susanto, D. C., Parr, R., and Flynn, J. A. (2007). Trade Creation and Trade Diversion in the North American Free Trade Agreement. *Journal of Agricultural and Applied Economics*, 39(1), 121-134.
- Swanborn, P. (2010). *Case Study Research: What, Why and How?* London: SAGE Publications.
- Tarr, G. A. (2007). NAFTA and Federalism: Are They Compatible? *Norteamérica*, 2(2), 133-160.
- Taylor, C. (2000). NAFTA, GATT, and the Current Free Trade System: A Dangerous Double Standard for Workers' Rights. *Denver Journal of International Law and Policy*, 401-435.
- Taylor, P. (1982). Intergovernmentalism in the European Communities in the 1970s: Patterns and Perspectives. *International Organization*, 36(4), 741-766.
- Taylor, P. (1983). *The Limits of European Integration*. London: Croom Helm.
- Taylor, P. (1984). Nation-State in the European Communities: Superficial Realities and Underlying Uncertainties. *International Journal*, 39(3), 577-598.
- Teague, P. (2003). Labour-Standard Setting and Regional Trading Blocs: Lesson Drawing from the NAFTA Experience. *Employee Relations*, 25(5), 428-452.
- Texas Center for Policy Studies. (2000, July 11). *Summary of the 2000 Annual Meeting of NADBANK*. Retrieved April 10, 2013, from Texas Center for Policy Studies: Border Trade and Environment Project: <http://www.texascenter.org/bordertrade/nadbank.htm>
- Texas Commission on Environmental Quality. (2004). *NADBank Looks to Expand Financial Clout*. Retrieved April 11, 2013, from Texas Commission on Environmental Quality: [http://www.tceq.texas.gov/assets/public/comm\\_exec/pubs/pd/020/04-03/nadbank-x.pdf](http://www.tceq.texas.gov/assets/public/comm_exec/pubs/pd/020/04-03/nadbank-x.pdf)
- The Economist. (2010, August 26). *Brazilian Agriculture: The Miracle of the Cerrado*. Retrieved April 30, 2014, from The Economist: <http://www.economist.com/node/16886442>
- The Nobel Foundation. (2012). *The Nobel Peace Prize 1969 - Presentation Speech*. Retrieved March 18, 2012, from The Nobel Prize: [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1969/press.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1969/press.html)
- Thomas, J. C. (2001, February 19). *Metalclad v. United Mexican States: Canadian Judicial Review Proceeding Transcripts*. Retrieved July 16, 2013, from NAFTA Claims: <http://naftaclaims.com/Disputes/Mexico/Metalclad/MetalcladTranscriptsDay1.pdf>
- Trilateral Committee. (2012). *Trilateral Committee of Wildlife and Ecosystem Conservation*. Retrieved November 17, 2013, from <http://www.trilat.org/>
- UAW. (2012). *International Trade and Investment Policy*. Retrieved April 4, 2012, from United Auto Workers: <http://www.uaw.org/page/international-trade-and-investment-policy>

- UE News Update. (2007, November 1). *Mexico Looks for Answers on US Labor Rights Violations*. Retrieved June 12, 2012, from UE News Update: <http://www.ueunion.org/uenewsupdates.html?news=349>
- UNCTAD/WTO. (2006). *Juris International*. Retrieved August 28, 2012, from Chapter 13: Trade-Related Investment Measures: <http://www.jurisint.org/pub/06/en/doc/C13.pdf>
- UNData. (2011). *GDP by Type of Expenditure at Current Prices*. Retrieved August 26, 2011, from United Nations Statistics Division: <http://data.un.org/Data.aspx?q=GDP+at+current+pricesandd=SNAAMAandf=grID%3a101%3bcurrID%3aUSD%3bpcFlag%3a0>
- United Nations. (2002). *Annual Review of Developments in Globalization and Regional Integration in the Countries of the ESCWA Region*. Beirut: United Nations.
- United States Department of Labor. (2014). *Public Reports of Review*. Retrieved April 4, 2014, from Bureau of International Labor Affairs: <http://www.dol.gov/ilab/media/reports/nao/public-reports-of-review.htm>
- US Census Bureau. (2011). *American FactFinder: 1990 Census of Population and Housing*. Retrieved August 27, 2011, from US Department of Commerce, US Census Bureau: [http://factfinder.census.gov/servlet/DTTable?\\_bm=yand-geo\\_id=01000USand-ds\\_name=DEC\\_1990\\_STF1\\_and-\\_lang=enand-mt\\_name=DEC\\_1990\\_STF1\\_P001and-format=and-CONTEXT=dt](http://factfinder.census.gov/servlet/DTTable?_bm=yand-geo_id=01000USand-ds_name=DEC_1990_STF1_and-_lang=enand-mt_name=DEC_1990_STF1_P001and-format=and-CONTEXT=dt)
- US Census Bureau. (2013, February 8). *US International Trade Data - Foreign Trade: Trade in Goods with Canada*. Retrieved February 11, 2013, from US Census Bureau: <http://www.census.gov/foreign-trade/balance/c1220.html#1990>
- US Census Bureau. (2013, February 8). *US International Trade Data - Foreign Trade: Trade in Goods with Mexico*. Retrieved February 11, 2013, from US Census Bureau: <http://www.census.gov/foreign-trade/balance/c2010.html#1990>
- US Census Bureau. (2013, February 8). *US International Trade Data - Foreign Trade: Trade in Goods with World, Not Seasonally Adjusted*. Retrieved February 11, 2013, from US Census Bureau: <http://www.census.gov/foreign-trade/balance/c0015.html#1990>
- US Congress. (2003). Congressional Record: Proceedings and Debates of the 108th Congress First Session. 149(4). Washington, DC: US Government Printing Office.
- US Department of Commerce. (2011, August 26). *National Data: National Income and Product Accounts Tables*. Retrieved August 26, 2011, from US Department of Commerce, Bureau of Economic Analysis: <http://www.bea.gov/iTable/iTable.cfm?ReqID=9andstep=1>
- US Department of Labor. (1994, April 7). Federal Register. *Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines*, 59(67).
- US Department of Labor. (2010, March). *Status of Submissions under the NAALC*. Retrieved February 5, 2012, from US Department of Labor, Bureau of International Labor Affairs: <http://www.dol.gov/ilab/programs/nao/status.htm>

- US Department of State. (1993, January 15). *Background Note: The European Community*. Retrieved August 27, 2011, from Office of Public Communication, Bureau of Public Affairs, US Department of State: <http://dosfan.lib.uic.edu/ERC/bgnotes/igos/ec9301.html>
- US Department of State. (1997, July 11). *Latin America Special File: Study on the Operation and Effects of the North American Free Trade Agreement*. Retrieved April 8, 2013, from US Information Agency: <http://usembassy-israel.org.il/publish/press/whouse/archive/1997/july/wh50714.htm>
- US Department of State. (1998, June 18). *United States Department of State Strategic Plan*. Retrieved February 13, 2013, from Homeland Security Digital Library: <http://www.hsdl.org/?viewanddid=446144>
- US Department of State. (2011, June 1). *Background Note: Canada*. Retrieved August 9, 2011, from Bureau of Western Hemisphere Affairs, US Department of State: <http://www.state.gov/r/pa/ei/bgn/2089.htm>
- US Department of State. (2012). *Economic Section: US-Canada Trade and Economy*. Retrieved September 28, 2012, from Embassy of the United States, Ottawa: <http://canada.usembassy.gov/about-us/embassy-offices/economic-section.html>
- US Department of State. (2012). *Good Neighbor Policy, 1933*. Retrieved October 9, 2012, from Office of the Historian, Bureau of Public Affairs: <http://history.state.gov/milestones/1921-1936/GoodNeighbor>
- US Department of State. (2012). *Metalclad Corp. v. United Mexican States*. Retrieved June 29, 2012, from US Department of State, Office of the Legal Adviser: International Claims and Investment Disputes (L/CID): <http://www.state.gov/s/l/c3752.htm>
- US Department of State. (2013, February). *2013 Investment Climate Statement - Argentina*. Retrieved April 25, 2014, from US Department of State, Bureau of Economic and Business Affairs: <http://www.state.gov/e/eb/rls/othr/ics/2013/204592.htm>
- US Department of State. (2013). *NAFTA Investor-State Arbitrations: Cases Filed Against the United States of America*. Retrieved July 16, 2013, from US Department of State, Office of the Legal Adviser: <http://www.state.gov/s/l/c14683.htm>
- US Department of State. (2013). *US-Mexico Binational Commission*. Retrieved October 18, 2013, from <http://www.state.gov/p/wha/ci/mx/c10787.htm>
- US EPA and Environment Canada. (2011). *Amending the Great Lakes Water Quality Agreement*. Retrieved February 6, 2013, from US Environmental Protection Agency and Environment Canada: [http://www.binational.net/glwqa\\_2011\\_e.html](http://www.binational.net/glwqa_2011_e.html)
- US EPA. (2012, June 25). *Great Lakes Strategy 2002: A Plan for the New Millennium*. Retrieved February 6, 2013, from United States Environmental Protection Agency: <http://www.epa.gov/greatlakes/gls/gls05.html>
- US EPA. (2012, October 3). *Great Lakes Water Quality Agreement*. Retrieved February 6, 2013, from US Environmental Protection Agency: Great Lakes Water Quality Agreement

- US EPA. (2012, April 4). *US-Canada Environmental Cooperation*. Retrieved February 3, 2013, from United States Environmental Protection Agency: <http://www.epa.gov/international/regions/na/canada/index.html>
- US GPO. (1993, November 30). *North American Free Trade Agreement Implementation Act*. Retrieved May 22, 2013, from US Government Printing Office: <http://www.gpo.gov/fdsys/pkg/BILLS-103hr3450enr/pdf/BILLS-103hr3450enr.pdf>
- US House of Representatives. (2003, February 25). *Committee Reports 108th Congress (2003-2004) House Report 108-017*. Retrieved April 11, 2013, from The Library of Congress: [http://thomas.loc.gov/cgi-bin/cpquery/17?andsid=cp108c6QGnandrefer=andr\\_n=hr017.108anddb\\_id=108anditem=17andandsid=cp108c6QGnandr\\_n=hr017.108andhd\\_count=50anditem=17andandsel=TOC\\_3849and](http://thomas.loc.gov/cgi-bin/cpquery/17?andsid=cp108c6QGnandrefer=andr_n=hr017.108anddb_id=108anditem=17andandsid=cp108c6QGnandr_n=hr017.108andhd_count=50anditem=17andandsel=TOC_3849and)
- US Inflation Calculator. (2011, August 18). Retrieved August 26, 2011, from US Inflation Calculator, US Consumer Price Index: <http://www.usinflationcalculator.com/>
- US International Trade Commission. (2010). *ASEAN: Regional Trends in Economic Integration, Export Competitiveness, and Inbound Investment for Selected Industries*. Washington, DC: US International Trade Commission.
- Vega Cánovas, G. (2003). El TLCAN: El Punto de Vista de México. In J. J. De Olloqui (Ed.), *Jornadas sobre México y los Tratados de Libre Comercio* (pp. 47-56). México, DF: Universidad Nacional Autónoma de México.
- Waldkirch, A., and Tekin Koru, A. (2009, January). *North American Integration and Canadian Foreign Direct Investment*. Retrieved June 28, 2012, from Ludwig-Maximilians-Universität München: Munich Personal RePEc Archive: [http://mpra.ub.uni-muenchen.de/12968/1/cannaftafdi\\_08\\_v7.pdf](http://mpra.ub.uni-muenchen.de/12968/1/cannaftafdi_08_v7.pdf)
- Waldkirch, A., and Tekin-Koru, A. (2010). North American Integration and Canadian Foreign Investment. *The B.E. Journal of Economic Analysis and Policy*, 10(1), 1-38.
- Walker, C. (1997). NAFTA and Occupational Health: A Canadian Perspective. *Journal of Public Health Policy*, 8(3), 325-333.
- Wallace, C. D. (2002). *The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization*. The Hague: Kluwer Law International.
- Walter, J. D. (2014, February 25). *Brazil and EU inch closer to free trade deal*. Retrieved April 30, 2014, from Deutsche Welle: <http://www.dw.de/brazil-and-eu-inch-closer-to-free-trade-deal/a-17456134>
- Waltz, K. N. (1979). *Theory of International Politics*. New York: McGraw-Hill.
- Warleigh-Lack, A. (2006). Learning from Europe? EU Studies and the Re-Thinking of 'International Relations'. *European Journal of International Relations*, 12(31), 31-51.
- Warleigh-Lack, A. (2006). Towards a Conceptual Framework for Regionalisation: Bridging 'New Regionalism' and 'Integration Theory'. *Review of International Political Economy*, 13(5), 750-771.

- Warleigh-Lack, A. (2008). Studying Regions Comparatively: Evidence from NAFTA . *Proceedings of the 3rd GARNET Annual Conference* (pp. 1-17). Bordeaux: University of Bordeaux.
- Warleigh-Lack, A. (2009). The EU in Comparative Perspective: Comparing the EU and NAFTA. *Proceedings of the 3rd European Union Centre of Excellence Conference* (pp. 1-17). Halifax: European Union Centre of Excellence (EUCE), Dalhousie University.
- Warleigh-Lack, A. (2010). The EU in Comparative Perspective: Comparing the EU and NAFTA. In F. Laursen (Ed.), *Comparative Regional Integration: Europe and Beyond* (pp. 43-61). Farnham: Ashgate.
- Warleigh-Lack, A., and Rosamond, B. (2010). Across the EU Studies–New Regionalism Frontier: Invitation to a Dialogue. *Journal of Common Market Studies*, 48(4), 993–1013.
- Warleigh-Lack, A., Robinson, N., and Rosamond, B. (2011). *New Regionalism and the European Union: Dialogues, Comparisons and New Research Directions*. Abingdon: Routledge.
- Warner , W. K., and Havens, A. E. (1967). The Logic of Collective Action: A Review Essay. *Land Economics*, 43(4), 446-450.
- Weintraub, S. (1990). *A Marriage of Convenience: Relations Between Mexico and the United States*. New York: Oxford University Press.
- Weiss, M. S. (1999). Foreword: Proceedings of the Seminar on International Treaties and Constitutional Systems of the United States, Mexico and Canada. *Maryland Journal of International Law and Trade*, 22(2), 185-219.
- Westbrook, J. L. (2008). Legal Integration of NAFTA Through Supranational Adjudication. *Texas International Law Journal*, 43(3), 349-358.
- Whalley, J. (1998). Why Do Countries Seek Regional Trade Agreements? In J. A. Frankel (Ed.), *The Regionalization of the World Economy* (pp. 63-90). Chicago: University of Chicago Press.
- Wheeler, J. (1997). Discussion: Expanding North American Free Trade to the South -- IR Issues. *Proceedings of the Forty-Ninth Annual Meeting of the Industrial Relations Research Association* (pp. 243-245). Madison: University of Wisconsin–Madison.
- Wincott, D. (1995). Institutional Interaction and European Integration: Towards and Everyday Critique of Liberal Intergovernmentalism. *Journal of Common Market Studies*, 33(4), 597-609.
- Wirth, J. D. (2003). Perspectives on the Joint Public Advisory Committee. In D. L. Markell, and J. H. Knox (Eds.), *Greening NAFTA: The North American Commission for Environmental Cooperation*. Stanford: Stanford University Press.
- Wise, C. (1998). *The Post-NAFTA Political Economy: Mexico and the Western Hemisphere*. University Park: Pennsylvania State University Press.

- Wise, C. (2007). No Turning Back: Trade Integration and the New Development Mandate. In I. Studer, and C. Wise (Eds.), *Requiem or Revival? The Promise of North American Integration* (pp. 1-26). Washington, D.C.: The Brookings Institution.
- Wise, C. (2009, March). Global Monitor: The North American Free Trade Agreement. *New Political Economy*, 14(1), 133-148.
- Woodrow Wilson Centre. (2005). *NAFTA at 10: Progress, Potential, and Precedents*. Washington, DC: Woodrow Wilson International Centre for Scholars.
- Woods, M. G., and Grierson-Weiler, T. (2005, March 16). *Theodorus De Boer, Simon De Boer and Jack De Boer v. The United States of America*. Retrieved July 16, 2013, from U.S. Department of State, Office of the Legal Adviser: <http://www.state.gov/documents/organization/52299.pdf>
- Woods, M. G., and Grierson-Weiler, T. (2007, January 30). *Canadian Claimants vs. United States of America: Reply Memorial on the Preliminary Question*. Retrieved July 21, 2013, from US Department of State, Office of the Legal Adviser: <http://www.state.gov/documents/organization/79811.pdf>
- World Trade Law. (2014). *Treaty of Asunción: MERCOSUR Free Trade Agreement*. Retrieved April 30, 2014, from World Trade Institute: <http://www.worldtradelaw.net/fta/agreements/mercosurfta.pdf>
- WTO. (1995). *Agreement on Trade-Related Investment Measures*. Retrieved September 4, 2012, from World Trade Organization: [http://www.wto.org/english/docs\\_e/legal\\_e/18-trims.pdf](http://www.wto.org/english/docs_e/legal_e/18-trims.pdf)
- WTO. (2012). *Understanding the WTO: Settling Disputes: The Panel Process*. Retrieved September 9, 2012, from World Trade Organization: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm)
- WTO. (2014). *Information about International Trade and Market Access*. Retrieved April 25, 2014, from World Trade Organization: [http://www.wto.org/spanish/res\\_s/statis\\_s/statis\\_bis\\_s.htm?solution=WTOandpath=/Dashboards/MAPSandfile=Map.wcdfandbookmarkState={%22impl%22:%22client%22,%22params%22:{%22langParam%22:%22es%22}}}](http://www.wto.org/spanish/res_s/statis_s/statis_bis_s.htm?solution=WTOandpath=/Dashboards/MAPSandfile=Map.wcdfandbookmarkState={%22impl%22:%22client%22,%22params%22:{%22langParam%22:%22es%22}})
- WTO. (2014, March). *Profile: Bolivarian Republic of Venezuela*. Retrieved April 30, 2014, from World Trade Organization: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=EandCountry=VE>
- Zamora, S. (2008). A Proposed North American Regional Development Fund: The Next Phase of North American Integration Under NAFTA. *Loyola University Chicago Law Journal*, 40, 93-140.